IN THE

Supreme Court of the United States

October Term, 1971

No. 71-1051

PARIS ADULT THEATRE I,
Petitioner,

v.

LEWIS R. SLATON, As District Attorney, Atlanta Judicial Circuit, and HINSON McAULIFFE, As Solicitor General of the Criminal Court of Fulton County, Georgia,
Respondents.

PARIS ADULT THEATRE II,
Petitioner,

v.

LEWIS R. SLATON, As District Attorney, Atlanta Judicial Circuit, and HINSON McAULIFFE, As Solicitor General of the Criminal Court of Fulton County, Georgia,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

MOTION OF CHARLES H. KEATING, JR., FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE IN SUPPORT OF RESPONDENT WITH BRIEF ANNEXED

Richard M. Bertsch
James J. Clancy
Ray T. Dreher
Albert S. Johnston III
440 Leader Bldg.
Cleveland, O., 44114
Of Counsel

Charles H. Keating, Jr.
18th Floor, Provident Tower
One East Fourth Street
Cincinnati, O., 45202
Amicus Curiae

SUBJECT INDEX

TABLE OF AUTHORITIES CITED

CASES

CODES & STATUTES

MISCELLANEOUS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

NO. 71-1051

PARIS ADULT THEATRE I, ET AL,
Petitioners,

v.

LEWIS R. SLATON, DISTRICT ATTORNEY, ATLANTA JUDICIAL CIRCUIT, ET AL,
Respondents.

On Writ Of Certiorari From The Supreme Court of Georgia

MOTION OF CHARLES H. KEATING, JR., FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE IN SUPPORT OF RESPONDENT WITH BRIEF ANNEXED

Charles H. Keating, Jr., (hereinafter referred to as Moving Party) respectfully moves, pursuant to Rule 42(3) of the Rules of the U. S. Supreme Court, for leave to file a brief as Amicus Curiae in support of the Respondents, Hinson McAuliffe, as Solicitor General of the Criminal Court of Fulton County, Georgia, and Lewis R. Slaton, as District Attorney, Atlanta Judicial Circuit.

Moving Party has a special interest in the subject matter of this appeal, having devoted considerable time, study and effort to assisting law enforcement in combating the spread of obscenity in the Nation: first, as the founder and co-counsel for Citizens for Decent Literature, Inc., and more recently as a member of the Presidential Commission on on Obscenity and Pornography. Moving Party is also the appellee in an obscenity case pending before this Court, entitled, "*A Motion Picture Film Entitled 'Vixen', Russ Meyer, Eve Productions, Inc., Malibu, Inc., and Clarence P. Gall v. State of Ohio ex rel Charles H. Keating, Jr.*, October Term 1971, No. 71-599, as to which this Court on January 12, 1972, requested a response.[1] The latter appeal was carried over to the 1972 October Term without this Court having taken action thereon.

---

[1]In Moving Party's response thereto, see Motion to Affirm at pages 13-18, this Court was urged to grant plenary review in the "Vixen" appeal for several reasons: 1. The appeal involved a civil matter and was limited to the obscenity vel non issue; and 2. the record presented ideal "facts" for review, which included (a) one of the defendants was Producer Russ Meyer, the "King" (and very first) of the pandering motion picture producers; (b) the testimony of defense witness, film historian Arthur Knight, who candidly traced the erosion which has taken place since Russ Meyer started it all, and Russ Meyer's participation therein: (See also Arthur Knight's "tout" of "School Girls" in the Los Angeles Times "Cinema Theatre" ad of Oct. 7, 1972, at Appendix F, page 3) and (c) the testimony of plaintiff's witness, Mr. Melvin Anchell, a practicing psychiatrist and author of "Sex and Sanity," who very logically explained the psychiatric basis for the proscription of obscenity (and this Court's holding in Roth-Alberts, 354 U.S. 476, 485, that it was the universal judgment of civilized nations that obscenity should be restrained). The members of this Court, having viewed "Magic Mirror," produced several years after "Vixen" should make a comparison of the same with "Vixen" (photography, content, musical sound track, etc.) and ask themselves if justice does not require that a case, dealing directly with the producer, be handed down for the enlightenment of and as a warning for those in the trade. See Appendix F, pp 8-11 for Santa Monica article on James R. Haskin, Executive Producer of "Magic Mirror".

The grant of a writ of certiorari herein brings before this Court for oral argument, the first obscenity case dealing with a motion picture film since the grant of a writ of certiorari ten years ago in *Ohio v. Jacobellis*.[2] In Jacobellis, this Court reviewed the felony conviction of Nico Jacobellis, manager of the Heights Art Theater in Cleveland Heights, Ohio, for exhibiting the French imported film "Les Amants" (The Lovers) and examined the interdependent "obscenity" and "scienter" issues, which in the following years have continued to plague this Court.[3] Here in the *Paris Adult*

---

[2]Jurisdiction was first noted at the commencement of the 1962 October Term. *Jacobellis v. Ohio*, 371 U.S. 808, 9 L.Ed.2d 52, 83 S. Ct. 28 (Oct. 8, 1962). After argument without decision during that term, the case was restored to the docket. *Jacobellis v. Ohio*, 373 U.S. 901, 10 L.Ed.2d 197, 83 S. Ct. 1288 (Apr. 29, 1963). Reargument did not occur until late in the 1963 October Term (Apr. 1, 1964) with this Court's no-clear majority decision being handed down on the last day of that term. *Jacobellis v. Ohio*, 378 U.S. 184, 12 L.Ed.2d 793, 84 S. Ct. 1672 (June 22, 1964).

The *Jacobellis* decision presents only the law of the case and is not a constitutional precedent which binds this Court. In that decision, Justices Warren, Clark and Harlan dissented and Justices Black and Douglas refused to sit in judgment on the merits and apply the law of the land in *Roth v. U.S.*, 354 U.S. 476, 77 S. Ct. 1314, 1 L.Ed.2d 1498 (June 24, 1957), which holds obscenity legislation constitutional. Of the four remaining Justices, Justice White's vote without opinion can, with reason, be attributed to the criminal aspects of the case and the unfortunate fact that Jacobellis, as an alien and convicted felon, would be subject to a denial of citizenship. Compare Justice White's dissenting vote on the same day in the *civil case, Grove Press, Inc. v. Gerstein* (Tropic of Cancer), 378 U.S. 577, 12 L.Ed.2d 1035, 84 S. Ct. 1909 (June 23, 1964). Justice Stewart erroneously applied a "hard-core pornography" reasoning which this Court, in reviewing a state obscenity conviction in *Misbkin v. New York*, 383, U.S. 502, 508, 16 L.Ed.2d 56, 61, 86 S. Ct. 958 (Mar. 21, 1966), held *not* to be the law.

[3]See, for example, the compromising result reached in the *Redrup* and *Austin* cases, cert. granted, limited to the "scienter" issue in *Redrup v. New York*, 384 U.S. 916, 16 L.Ed.2d 438, 86 S. Ct. 1362 (Apr. 25, 1968), and *Austin v. Kentucky*, 384 U.S. 916, 16 L.Ed.2d 438, 86 S. Ct. 1362 (Apr. 25, 1966), but decided on

Theater case the issues are not so complex – only "obscenity vel non" is being litigated, and that in relation to the fundamental power of a sovereign state, functioning in a civilized society, to proscribe the same as a matter of law, so as to preserve good public morality.

Moving Party submits that the real import of the appeal herein will be apparent only to those members of this Court who are willing to recall to mind from memory the vastly superior state of public morality (sexual) which existed when *Jacobellis* was decided just one short decade ago. Succinctly put, when one dwells for too long a period in a dung heap, the reminiscent smell of fresh air has an elusive manner of escaping the memory.[4] Without invoking that

---

other grounds in a no-clear majority decision in *Redrup v. New York*, 386 U.S. 767, 18 L.Ed.2d 515, 87 S. Ct. 1414 (May 8, 1967).

The *Redrup* decision presents only the law of the case, and is not a constitutional precedent which binds this Court. In that decision, Justices Harlan and Clark dissented. Of the seven remaining Justices, Justices Black and Douglas refused to sit in judgment on the merits and apply the law of the land in *Roth*, 354 U.S. 476, 1 L.Ed.2d 1949, 77 S. Ct. 1314 (June 24, 1957), which holds obscenity legislation constitutional. Of the five remaining Justices, Justice Stewart erroneously applied a "hard-core" pornography" reasoning which this Court, in reviewing a state obscenity conviction in *Mishkin v. New York*, 383 U.S. 502, 508, 16 L.Ed.2d 56, 61, 86 S. Ct. 958 (Mar. 21, 1966), held not to be the law in state cases.

[4]See the observations of Federal District Judge Peirson Hall, speaking on "The Monster Vice" in *U. S. v. Four (4) Books*, 289 F.Supp. 972 at 973 (Sept. 10, 1968):

"'Vice is a monster of so vile a mien,
As, to be hated, needs but to be seen;
Yet seen too oft, familiar with her face,
We first endure, then pity, then embrace.'[1]"

"The verity of the above quotation is brought home not only by the continually increasing number of periodicals, paperbacks and other printed material glorifying things which most people regard as indecent or obscene, which flood news stands and bookracks, but also, to anyone who has read them, by the recent journeys of the Supreme Court of the United States on the question of 'obscenity' . . . ."

[1]From Alexander Pope's "Essay on Man."

reference, the significance of this appeal will dwindle into nothingness. and the result reached herein will become just another oscenity decision of this Court.

In Moving Party's view, this Nation is facing a moral crisis *of this Court's making*. It is not hyperbole to urge this Court that the result reached herein or, more properly, the rationale employed in arriving at that result, will either provide the foundation upon which our moral structures may be rebuilt, or will further excavate the grave of depravity into which this Nation is sure to tumble. The present fate of this Nation is in the hands of the individual members of this Court.[5]

---

[5] In the introduction of his book, "Jews, God and History," Max I. Dimont discusses the eight basic ways of viewing history, the last two of which he expresses as follows at page 20:

"The 'cult of personality' is the seventh face of history. Proponents of this school hold that events are motivated by the dynamic force of great men. If not for Washington, they say, there would have been no American Revolution; if not for Robespierre, there would have been no French Revolution; if not for Lenin, there would have been no Russian Revolution. Men create the events, claim these historians, in contrast to the economic interpreters who insist on the exact opposite, that events create the men.

"The eighth face of history, the religious, is both the oldest and newest concept. The Bible is the best example of this type of historical writing in the past. This way of viewing history looks upon events as a struggle between good and evil, between morality and immorality. Most Jewish history, until recent times, has been written from this viewpoint . . . .

". . . Martin Buber holds that the central theme running through their history is the relation between the Jew and his God, Jehovah. In the Jewish religious view of history, God has given man freedom of action. Man, as conceived by the Jewish existentialists, has the power to turn to God or away from God. He can act either for God or against God. What happens between God and man is history. In the Jewish way way of looking at things, success in an undertaking, for instance, is not viewed as blessed by God. A man may arrive at power because he was unscrupulous, not because God aided him. This leaves God free to hold man accountable for his actions – both successes and failures."

Governmental attorneys, in defending attacks on public morality, are prone to take the short view and limit their reply to a case by case response. This, Moving Party submits, places the people's cause at a disadvantage. Moving Party, therefore, respectfully requests that he be granted leave to file a brief amicus curiae, setting forth arguments on the broader view for such assistance as they may provide to the individual members of this Court.

Dated: October , 1972.

CHARLES H. KEATING, Jr.
Amicus Curiae

This Nation, with its roots inextricably woven in our Judaeo-Christian background, is at a crossroads, and in danger of tobogganning toward destruction in the face of the warning words of Presiding Justice Turney Fox in *California v. Williamson*, 207 Cal. App. 2d, 838, 24 Cal. Rptr. 734 (Sept. 26, 1962) (Paperback book, Fear of Incest), cert. den. in *Williamson v. California*, 377 U.S. 994, 12 L.Ed.2d 1047, 84 S. Ct. 1902 (June 22, 1964) rehearing denied in 379 U.S. 871, 13 L.Ed.2d 77, 85 S. Ct. 13 (Oct. 12, 1964) that "other civilizations have in the past which have over-indulged their appetites and cast aside decent standards of behavior." Moving Party submits that the judgment of the individual members of this Court will have its dynamic force in one direction or the other and that, in truth, men do create the events.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

NO. 71-1051

PARIS ADULT THEATRE I, ET AL,
Petitioners,

v.

LEWIS R. SLATON, DISTRICT ATTORNEY, ATLANTA JUDICIAL CIRCUIT, ET AL,
Respondents.

On Writ Of Certiorari From The Supreme Court of Georgia

Brief Amicus Curiae of Charles H. Keating, Jr., in Support of Respondent.

STATEMENT OF THE CASE

A. BACKGROUND

On December 28, 1970, Respondents Hinson McAuliffe, as the Solicitor General of the Criminal Court of Fulton County, and Lewis R. Slaton, as the District Attorney of the Atlanta Judicial Circuit, joined as plaintiffs in filing two complaints in the Fulton County Superior Court in Atlanta,

Georgia, seeking equitable relief on public nuisance grounds[5] against the Paris Adult Theatre I and Paris Adult Theatre II and its operators, alleging that on December 28, 1970, the defendants exhibited to the general public for an admission charge the 16 millimeter motion picture film entitled, "It All Comes Out In The End" at the Paris Adult Theatre I (A 19-25) and the 16 millimeter motion picture film "Magic Mirror" at the Paris Adult Theatre II (A 38-43), in violation of the State obscenity statute, Georgia Code Section 26-2101. The complaints further charged that the sole and dominant theme of the films considered as a whole, applying contemporary standards, appealed to a prurient interest in sex, nudity and

---

[5]The Georgia Supreme Court gave its approval to the "nuisance" approach to "obscenity" in *Evans Theatre Corp. v. Slaton* (I Am Curious (Yellow)), 180 S.E.2d 712, 716, Mar. 4, 1971, petition for certiorari denied in *Evans Theatre Corp. v. Slaton*, U.S. , 30 L.Ed.2d 267, S. Ct. (Nov. 9, 1971), as follows:

"We recognize the principle that equity will take no part in the administration of the criminal law. Code § 55-102. However, it has long been the rule in this State that the State has an interest in the welfare, peace, and good order of its citizens and communities, *and that an action may be maintained at the instance of the prosecuting attorney to enjoin an existing or threatened public nuisance, even though the nuisance constitutes a crime punishable under the criminal laws.* See: Lofton v. Collins, 117 Ga. 434(3), 43 S.E. 708, 61 L.R.A. 150; Walker v. McNelly, 121 Ga. 114(1), 115, 48 S.E. 718; Edison v. Ramsey, 146 Ga. 767, 92 S.E. 513, Dean v. State, 151 Ga. 371(1), 106 S.E. 792, 40 A.L.R. 1132; Gullatt v. Collins, 169 Ga. 538, 150 S.E. 825; Rose Theatre Inc. v. Lilly, 185 Ga. 53(1), 193 S.E. 866; Atkinson v. Lam Amusement Co., 185 Ga. 379, 195 S.E. 156; Forehand v. Moody, 200 Ga. 166, 36 S.E.2d 321; Norris v. Willingham, 204 Ga. 441, 50 S.E.2d 22; Thornton v. Forehand, 211 Ga. 658, 87 S.E.2d 865; Lee v. Hayes, 215 Ga. 330, 331,110 S.E.2d 624.

"The exhibition of an obscene motion picture is a crime involving the welfare of the public at large, since it is contrary to the standards of decency and propriety of the community as a whole. The welfare of the whole community is served by restraining the showing of such an obscene film.

"The court of equity was authorized to enjoin the exhibition of this obscene motion picture to the public." (Our emphasis)

excretion, that the same was utterly and absolutely without any redeeming social value whatsoever, and transgressed beyond the customary limits of candor in describing and discussing sexual matters (A 19, A 38).

Both complaints requested that a Rule Nisi issue, requiring the defendants to show cause why such motion picture films should not be declared obscene. On that date, an ex parte order issued out of that Court temporarily restraining and enjoining the defendants "from concealing, destroying, altering or removing the . . . (films) . . . without the jurisdiction of this Court." and ordering the defendants to appear on January 13, 1971, at 2:00 P.M. with the films as they were exhibited to the general public on the 28th day of December, 1970, together with the proper equipment for exhibiting and viewing the same (A 22, 41) and show cause why such orders should not issue.

The films were produced in Court by the defendants on January 13, 1971, after Joe Bellew, the manager of both theatres had been held in contempt for refusing to furnish the same on grounds of self-incrimination[7] (A 48). At that

---

[7]In addressing itself to this problem, the Arizona Supreme Court in *Anderson v. Coulter*, 499 P.2d 103 (June 29, 1972) recently held as follows:

"We believe that reliance upon the Fifth Amendment to prevent the production of a film that has been previously exhibited to the public is misplaced. *Having the protection of the First Amendment and asserting it as the defendant does here, it seems to us both illogical and irrational to say, particularly where the item has been exhibited to the public, that the defendant may then rely upon the privilege against self-incrimination to refuse to produce the film at the prior adversary hearing.*

"We agree with Justice Traynor concerning the extent of the testimonial privilege: '* * *When the prosecution has ample evidence of the existence, identity, and authenticity of documents in the defendant's possession and thus does not need to rely on his knowledge to locate and to identify them or on his testimony to authenticate them, it may be that his implied admission alone that the documents produced were those he

time, the parties stipulated and agreed to waive a jury trial and a preliminary hearing, in order that the judgment and order entered by the trial judge would be a final order and judgment in each case (A 89). It was also stipulated that three photographs (copies, Appendix F, p. 4) could be received in evidence as correctly portraying the outside of the Paris Adult Theatre I and Paris Adult Theatre II as they existed on December 28, 1970.

B. THE TRIAL

The two films, "It All Comes Out In The End" and "Magic Mirror" were exhibited to the Court (A 50). Time-Motion Studies of the subject matter appearing in those films appear hereinafter at pages 11 to 63, for this Court's examation.[8]

---

was ordered to produce would involve too trivial a degree of incrimination to justify invoking the privilege. (See Maguire, Evidence of Guilt, pp.22-23; Meltzer, Required Records, The McCarran Act, and the Privilege Against Self-Incrimination, 18 U.Chi.L.Rev. 687, 699-701.) * * * .' Jones v. Superior Court of Nevada County, 58 Cal.2d 56, 22 Cal. Rptr. 879, 372 P.2d 919, 921, 96 A.L.R.2d 1213 (1952).

"In this case, the prosecution's 'ample evidence' of the 'existence, identity, and authentiticy' of the movie was expressly shown in the subpoena duces tecum. It is obvious that the prosecution had everything it needed to identify the film and compliance with the subpoena duces tecum did no more than produce the film already known by both the prosecution and the court to exist.

"We believe that a person who exhibits to the public an allegedly obscene film has, by that showing, waived his right to claim his privilege against self-incrimination when subpoenaed to produce the film at the prior adversary hearing, provided the prosecu has properly identified the film to be produced." (Our emphasis)

[8]A time-motion study is a chronological series of still photographs of a motion picture film, timed in their relative order of appearance, which, by "stopping" the movement appearing on the motion picture screen and recording the same, permits the type of conduct being portrayed thereon to be analyzed in a fair and accurate manner. Compare in this regard, the photographic representations of "It All Comes Out In The End" and "Magic Mirror", with the verbal descriptions of the same in Judge Jack Etheridge's opinion, appearing at page 74.

TIME-MOTION STUDY OF

"MAGIC MIRROR

Exhibited at
Paris Adult Theatre,
Atlanta, Georgia

Dec. 28, 1970

"MAGIC MIRROR"

(Part 1 of 15 Parts)

"MAGIC MIRROR"
(Part 1 of 15 Parts)

Credits 1-2; Female 1 browsing in antique store, purchases mirror 3-34; female 1 in her Apt. 35-38; TV man arrives to do repair 39-55; female 1 enters her bedroom for purse and glances at mirror 56-58; fade to scene, female 1 & TV man,

"MAGIC MIRROR"

(Part 2 of 15 Parts)

"MAGIC MIRROR"
(Part 2 of 15 Parts)

Female 1 & TV man lather each other, genitals and breasts 73-111; they fall to floor and engage in sexual intercourse, female on top 113-136; female slides back and forth over his body 137-144

"MAGIC MIRROR"

(Part 3 of 15 Parts)

"MAGIC MIRROR"
(Part 3 of 15 Parts)

Female continues to slide over male 144-170; sexual intercourse, woman on top 172-194; sexual intercourse, male on top 196-216.

"MAGIC MIRROR"

(Part 4 of 15 Parts)

"MAGIC MIRROR"
(Part 4 of 15 Parts)

Sexual intercourse, male on top 217-254; they grapple and roll over each other 254-276; sexual intercourse, woman on top 277-288.

"MAGIC MIRROR"

(Part 5 of 15 Parts)

"MAGIC MIRROR"
(Part 5 of 15 Parts)

Sexual intercourse, woman on top 289-293; sexual intercourse, man on top 295-301; simultaneous fellatio and cunnilingus 301-319; fadeout to 322; female 1 pays TV man 322-329; female reading as doorbell rings, female 2 and female 3o

"MAGIC MIRROR"

(Part 6 of 15 Parts)

"MAGIC MIRROR"
(Part 6 of 15 Parts)

Fade to both girls nude 360-364; lesbian activity 364-382; female on top, rubbing genitals 383-399; lesbian activity 400-408; cunnilingus 409-415; females fondle each other's breasts 416-432.

"MAGIC MIRROR"

(Part 7 of 15 Parts)

"MAGIC MIRROR"
(Part 7 of 15 Parts)

Focus on anus 433-440; cunnilingus 441-453; simultaneous cunnilingus 454-493; reverse positions in cunnilingus 494-504.

(Part 8 of 15 Parts)

"MAGIC MIRROR"
(Part 8 of 15 Parts)

Cunnilingus 505-512; rubbing of genitals 512-527; cunnilingus and auto-eroticism 527-558; lesbian activity 558-576.

"MAGIC MIRROR"

(Part 9 of 15 Parts)

"MAGIC MIRROR"
(Part 9 of 15 Parts)

Lesbian activity 577-583; rubbing of genitals 584-636; fadeout as girls leave 641; scene shifts to bedroom, female and man in full dress are dancing, 641-648.

"MAGIC MIRROR"

(Part 10 of 15 Parts)

"MAGIC MIRROR"
(Part 10 of 15 Parts)

Female 1 and man dance 649-659; both look at mirror - fadeout to two nude males and two nude females dancing 661-678; cunnilingus 678; fellatio 680-682; sexual embrace 682-690; cunnilingus 691-701; sexual intercourse, woman or top, 702-707; sexial activity 708-720.

"MAGIC MIRROR"

(Part 11 of 15 Parts)

"MAGIC MIRROR"
(Part 11 of 15 Parts)

Cunnilingus 723; sexual intercourse 724-731; cunnilingus 733; sexual intercourse male on top 737-750; sexual intercourse, woman on top 751-756; group orgy 756-792

"MAGIC MIRROR"

(Part 12 of 15 Parts)

"MAGIC MIRROR"
(Part 12 of 15 Parts)

Sexual intercourse, male on top 793; 824-833; sexual intercourse, woman on top 834; group orgy 834-856; fade to apartment 856-858; couple leave in formal attire 858-861; scene shifts to female 1 asleep in bed 862-864.

"MAGIC MIRROR"

(Part 13 of 15 Parts)

"MAGIC MIRROR"
(Part 13 of 15 Parts)

Burglar enters and rifles her purse 865-869; female awakes and burglar using gun forces her to lie down as he binds her hands 872-880; policeman enters and holds gun on burglar 881-892; fade to robber and policeman nude, fondling female 1

"MAGIC MIRROR"

(Part 14 of 15 Parts)

"MAGIC MIRROR"
(Part 14 of 15 Parts)

Sexual intercourse between female 1 and burglar 932-940; female on top 940-943; cunnilingus 944; sexual intercourse, woman on bottom 948-956; sexual intercourse woman on top 958-965; sexual intercourse, lying on top of unconscious policeman 980-984; officer awakens 984-987; group orgy 987-1008.

"MAGIC MIRROR"

(Part 15 of 15 Parts)

"MAGIC MIRROR"
(Part 15 of 15 Parts)

Group sexual intercourse 1009-1032; sexual intercourse, woman on top 1049; female performs fellatio on each; policeman licks her toes 1064; scene changes back to room; police officer shoots burglar who falls to floor 1064; policeman leaves to make report; female reads note.

TIME-MOTION STUDY OF

"IT ALL COMES OUT IN THE END"

Exhibited at
Paris Adult Theatre,
Atlanta, Georgia

Dec. 28, 1970

(Part 1 of 10 Parts)

"IT ALL COMES OUT IN THE END"
(Part 1 of 10 Parts)

Credits 1-15; Females 1 and 2 in lesbian activity 16-21; males 1 and 2 riding in auto 22; lesbian activity 23-26; males in auto 27-31; lesbian activity 32-35; males in auto 36-38; cunnilingus 39-49; double cunnilingus 50-66; males in

"IT ALL COMES OUT IN THE END"

(Part 3 of 10 Parts)

"IT ALL COMES OUT IN THE END"
(Part 3 of 10 Parts)

Females 1 and 2 at dock area 145-157; two males arrive and go in opposite direction 158-176; female 1 invites male 1 to her apartment for coffee 177-193; female 2 (blonde) arrives with male 2 (companion of male 1) 194-209; female 2 in kitchen talks to male 2. They embrace 210-216.

"IT ALL COMES OUT IN THE END"

(Part 4 of 10 Parts)

"IT ALL COMES OUT IN THE END"
(Part 4 of 10 Parts

Female 2 and male 2 embrace in kitchen 217-219; male 1 talks to female 1 and are joined by other couple 220-224; male 2 and female 1 (brunette) go into bedroom; male 2 forcibly undresses and engages female 1 in intercourse and cunnilingus 228-261; female 2 in living room does strip tease for male 1 262-275; in bedroom, male 2 and female 1 engage in cunnilingus and fellatio 276-288.

"IT ALL COMES OUT IN THE END"

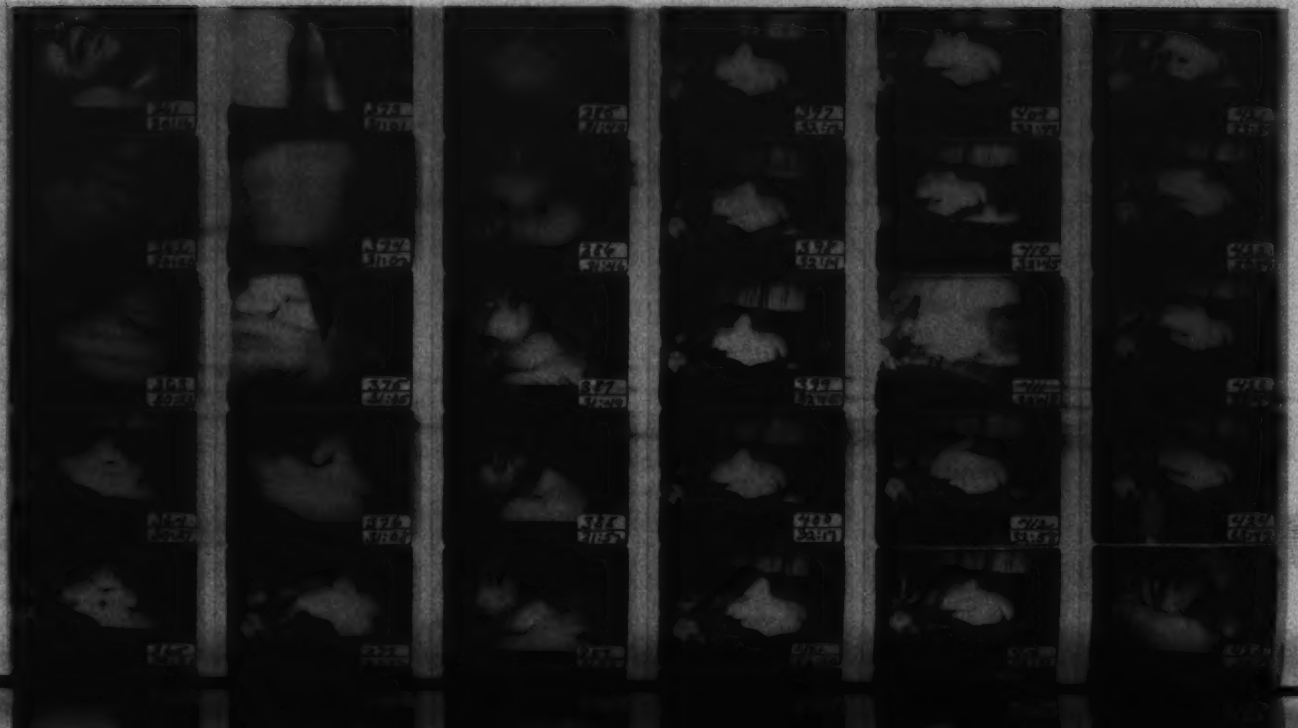
(Part 5 of 10 Parts)

"IT ALL COMES OUT IN THE END"
(Part 5 of 10 Parts)

Female 2 undresses male 1 in living room 290-296; female 1 and male 2 in sexual intercourse in bedroom 297-302; female 2 mounts male 1 in living room 303-314; sexual intercourse in bedroom, male on top 315-331; female 2 undresses male in living room and starts fellatio 332-340; sexual intercourse in bedroom, male on top 341-360.

"IT ALL COMES OUT IN THE END"

(Part 6 of 10 Parts)



"IT ALL COMES OUT IN THE END"
(Part 6 of 10 Parts)

Female 2 performs fellatio on male 1 in living room, who has climax. 361-432.

"IT ALL COMES OUT IN THE END"

(Part 7 of 10 Parts)

"IT ALL COMES OUT IN THE END"
(Part 7 of 10 Parts)

Sexual intercourse in bedroom, male on top 433-453; in bedroom, male 2 forces female to perform fellatio 454-483; sexual intercourse in bedroom, male on top 484-504. Sexual climax.

"IT ALL COMES OUT IN THE END"

(Part 8 of 10 Parts)

"IT ALL COMES OUT IN THE END"
(Part 8 of 10 Parts)

Sexual intercourse in bedroom, male 2 on top 505-523; male 2 exist bedroom and female 2 enters bedroom 524-531; males 1 and 2 reach homosexual understanding in living room 532-550; females 1 and 2 engage in lesbian acts in bedroom 551-559; males 1 and 2 enter bedroom 560-565; males 1 and 2 engage females 1 and 2 in sex orgy 566-576.

"IT ALL COMES OUT IN THE END"

(Part 10 of 10 Parts)

"IT ALL COMES OUT IN THE END"
(Part 10 of 10 Parts)

Sexual intercourse, male on top 649-667.

THE END

The two investigators from the Solicitor's offi identified the same as being the films which they had se exhibited at the Paris Adult Theatre I and Paris Adu Theatre II on December 28, 1970. The defense offered on witness, Robert Morris Dowd, Assistant Professor of Mate nity and Child Health and Family Health and Populatio Dynamics at the School of Public Health and Tropical Med cine at Tulane University, who testified that the predomin ant appeal of the film was not to a prurient interest in se and that the films were of value to society.

1. Plaintiff's Case in Chief

On direct examination by Mr. Moran, Ira W. Brown, an in vestigator in the Solicitor's office testified as to the circum stances surrounding his viewing of the film. He stated th on December 28, 1970, he had occasion to view the film, " All Comes Out In The End" in its entirety at the Par Adult Theatre, 320 Peachtree Street, Fulton County, Georgi where he gained admission by paying an admittance fee o $3.00; that he had seen the film which had been exhibited the Court and that, to the best of his knowledge,[9] the fil

---

[9]The disadvantage flowing from Ira Brown's failure to ta possession of the instrumentality of the crime on December 2 1970, is apparent, With a lapse of two weeks between the tw viewings, the "faulty judgment resulting from disability in one more of the senses, *Breithaupt v. Abram*, 352 U.S. 432, 439, L.Ed.2d 448, 453, 77 S. Ct. 409 (Feb. 25, 1957), had time to ta hold and the most reliable testimonial evidence that he could giv was that "to the best of my knowledge" the films were the sam It is a well-documented fact that sexually oriented motion pictu films are often altered by deleting erotic scenes. The effecti administration of justice requires that an exact copy of the co tents of the film, as shown at the time of the alleged offense, b preserved for trial. See Amicus Curiae Brief of Charles H. Keatin Jr. in Support of Respondent in *Roaden v. Commonwealth o Kentucky*, No. 71-1134, Point I B 1, at pages 69-85, "Legitima Interests of Society Require That The Autoptical Evidence Us To Project The Audio Sound And Visual Images On The Scre Be Preserved Against Alteration or Destruction."

ad seen exhibited in the courtroom was the same film he had seen at the Paris Art Theatre on December 28,), (A 50-51).

n cross-examination by defense counsel Smith, Brown ed that there were no advertising pictures on the outside e theatre to draw his attention to the contents of either e two films. (A 51)

n questioning by the Court he answered that he believed was a sign outside advising of the title of the film, "It Comes Out In The End" and that he knew the title of the as he went in, but that he believed the question asked as to any pictures, and he was assuming the question as to pictures of what was showing inside (A 52).

n re-examination by Mr. Moran, he testified that he did emember if the title of the picture was exhibited outside loor, or the marquee of the building; that there were people in the theatre when he was there; that there nothing exhibited on the outside of the theatre which l indicate acts of fellatio, or acts of cunnilingus, or f intercourse in multiple groups would be shown.

re-cross-examination by defense counsel Smith, Brown l that he had seen movies in the City of Atlanta where f cunnilingual activity and fellatio were clearly de- l. Asked, "Were there any such depiction clearly de- l in this movie?" he answered, "Not clearly." Asked in fact, saw any film that showed an act of inter- , he answered, "The film I would say spoke for itself. you say penetration, no." (A 53)

re-direct examination by Mr. Moran, he stated that he sed in the film a nude male between the legs of a emale, with motions, and saw the head and face of a female with her head in the pubic region of a nude

male.

On re-examination by the Court he was asked, "You h answered Mr. Moran's questions but I want to be sure your having seen that. Would you state or could you st whether those acts were simulated acts or actual acts cunnilingual activity and fellatio,"[10] to which Brown plied, "If you were in the room, you would see as much you see on the film if you were standing in the room." (A

On re-cross-examination by defense counsel Smith, Br re-stated that he had seen films in Atlanta in which the a were clearly depicted, including penetration, and while Paris Adult Theatre film, did not show penetration, th was no difference between the movies. Asked the questi "So when you answered the Judge's question, it was y imagination that you were utilizing as to what was being picted on the screen, isn't that true?" he answered, "N wouldn't say that was my imagination." and that he cunnilingual activity and fellatio, or what he thought those things (A 55).

C. R. Little, an investigator in the Solicitor's of testified on direct examination as to the circumstances rounding his viewing of the film. He stated that on Dec ber 28, 1970, he had occasion to see the film, "Magic Mi in its entirety at the Paris Art Theatre at 320 Peach Street, Fulton County, Georgia, where he gained admis

[10] When Superior Court Hudge Jack Etheridge asked this tion of the witness, he himself has already seen both film their entirety. (A 50) In view of the nature of the context o film, "It All Comes Out In The End," (see time-motion stud pages to , supra) it is difficult for amicus to unders the significance of such a line of questioning. Perhaps J Etheridge was misled by the 8 millimeter film which def counsel proferred to the Court as "illustrations and not as dence" of films which were held not to be obscene. (A

by purchasing a ticket for $3.00; that he had seen the film which had been exhibited in the courtroom and that it was the same movie he had witnessed on December 28, 1970. (A 56) He stated he purchased the ticket from Cliff Terry, the clerk on duty, who told him that Fred Pritchard was the projectionist on duty. He stated that he knew Joe Bellew to be the manager of the theatre, but that Bellew was not there when he purchased the ticket; he stated that there was nothing on the outside of the theatre to warn a person what the contents of the film would be, other than that adult movies were being shown inside and that no one under 21 years of age would be admitted. (A 57)

The Court sustained the defense counsel's objection to the question regarding his opinion as to whether or not the film, "Magic Mirror" had any redeeming social value on the grounds that he had not been qualified as an expert. (A 58)

On cross-examination by defense counsel Smith, he was asked if there was a theatre in town which had signs outside that said acts of fellatio and intercourse were depicted inside to which he replied, "Yes, Flick 16 on Houston Street in Atlanta." (A 59) He stated that he saw acts of intercourse, fellatio and cunnilingus in the "Magic Mirror"; that he didn't see actual penetration of the penis, but had in other films; that he didn't actually see the woman putting her mouth on the man's penis; that he saw a man put his tongue in the area of the vagina, and that in one scene there was actual touching of the vagina of two women, and the feeling and fondling of the breasts, and the body of one another, movement, and heavy breathing; that coupled with the motions, the sound effects, and breathing, and so forth, there was no question but what acts of fellatio, cunnilingus and intercourse were being performed. (A 60)

He stated that he had at one time on another occasion seen an Indian shot from his horse in a movie and didn't think he got shot by the arrow. Asked, "That was simulated death, wasn't it?", he replied, "I suppose it was, yes sir." Asked if the Indian grunted and groaned and acted like he was dying, he answered, "Well, they go through the motions, yes sir."" (A 62)

On re-direct examination by Mr. Moran, he stated that there was no doubt in his mind when he saw a naked man with his head between the legs of a naked woman and his face in her pubic area that an act of cunnilingus was being performed, and that if he should walk into a room and see a nude woman with her legs spread apart and a nude man on

---

"A clear example of the application of a non sequitur. There is no law which prohibits the pictorial portrayal of simulated murder, whereas there is an almost universally recognized law which prohibits the pictorial portrayal of indecent public conduct and that is the law against "lewdness" in public displays. By far the best legal opinion on this point of law was written by Judge Burke, speaking for the majority of the New York Court of Appeals in *Trans-Lux Dist. Corp. v. Bd. of Regents*, 248 N.Y.S.2d 857, 861, (Mar. 26, 1964) reversed on other grounds in Trans-Lux Dist. Corp. v. Bd of Regents 380 U.S. 259, 13 L.Ed.2, 959, 85 S. Ct. 952.

"This comparison between the acknowledged competence of the State to forbid public or semi-public sex displays and its power to exert similar control over similar conduct depicted on the screen is not intended to imply any broad theory of legal equivalence between real conduct and filmed imitation. Indeed, the meaningful comparison exists only in a narrow range of cases. In most instances, the real conduct is illegal because of what is accomplished by the person, as in murder, forgery, or adultery. In such cases, the filmed dramatization obviously does not share the evil aimed at in the law applicable to the real thing. Where, however, the real conduct is illegal, not because of what is accomplished by those involved, but simply because what is done is shocking, offensive to see, and generally believed destructive of the general level of morality, then a filmed simulation fully shares, it seems to me, the evil of the original. In such cases the free expression protection of the First Amendment must apply to both or neither. It makes no sense at all to say that the conduct can be forbidden but not the play or film.

top of her going up and down and making upward and downward movements with her head and him making remarks for her to take it all, that was an act of fellatio. (A 63)

2. The Defense

Robert Morris Dowd was offered by the defense as a witness to testify on "prurient appeal" and "social value." (A 69) He stated that his present address was 6061 Parish Avenue, New Orleans, Louisiana, and that he was presently Assistant Professor of Maternity and Child Health and Family Health and Population Dynamics at the school of Public Health and Tropical Medicine at Tulane University; (A 65) that he was Vice-President of the Louisiana Mental Health Planning Council, a member of the Louisiana Mental Health Association, a member of the Louisiana Psychiatric Association and until recently, a member of the Juvenile Delinquency Committee of the Louisiana State Crime Commission on Law Enforcement and Administration of Criminal Justice; that during the past three years he had served as Director of Family Life and Sex Education of Orleans Parish in the public school system and also served as an adjunct to the Assistant Professor of Maternity and Child Health and a clinical Assistant Professor of Psychiatry and Neurology. (A 66)

He stated that he had a Bachelor of Arts degree in Philosophy from the University of Buffalo, a Master of Education degree from the University of Buffalo, and a Master of Arts degree from the same university; that he had a doctorate in education degree from the State University of New York at

Buffalo and a Master of Public Health degree in family health and population dynamics from Tulane University, School of Public Health and Tropical Medicine. (A 67)

Dowd stated that until July 1st he was a full-time member of Mr. Robert East's group practicing in Tulane University in the Department of Psychiatry and as a member of that group did mainly marital therapy and taught human sexuality and marital therapy to medical students and psychiatric residents; that in those matters he dealt with matters relating to nudity; that in the family planning unit in Tulane he was looking at the psychiatric aspects of family planning including human sexuality (A 67); that he maintained a marital therapy practice and took a limited number of patients referred to him by either psychiatrists or obstetricians in the New Orleans area. (A 68)

He stated that he had seen both, "It All Comes Out In The End" and "Magic Mirror." (A 69) Asked if those films had an appeal to the average adult's prurient interest in sex, he stated it was his opinion that they would not. (A 70) Asked why? He stated, "I just simply don't believe that the average normal American adult has a prurient in sex. I think that if the average American adult walked into one of these theaters and sees a movie such as this, that he is exhibiting a normal healthy sexual interest rather than a prurient or morbid or sick interest." (A 70)

Asked if those movies had any values to society, he answered, "Yes." Asked his opinion as to those values, he stated that many normal healthy American adults have a great curiosity about other forms of sexuality, (A 70) that they have fears about their own human sexuality and to go to a movie like this would help eliminate some of those fears; that a person who was normal and healthy who had fears that he might be a homosexual might go into a movie

such as this and see that depiction of the homosexual and say, "My God, I am not like that," or he might say, "I'm like that" and go seek help. So the movie might get him to come to a professional and to seek help. Also women have fears about their breasts being a normal size or abnormal size, do they have more pubic hair or less than others, and and so do males. Of course, the last movie wouldn't have helped any . . . ." He further stated that these kind of movies in general helped to eliminate fears and helped to satisfy curiosity about sexual matters. (A 71)

He quoted statistics from the Presidential Commission regarding the percentage of men and women who voluntarily expose themselves to this kind of material and concluded his testimony with the statement that, "I'm seeing more and more of the couples going to these theaters, married couples, and so forth. I think personally these movies appeal to the normal American adult, and I don't think it is a prurient interest, I think it is a healthy interest in sex." (A 71, 72)

On cross-examination by Mr. Moran he stated that he didn't see any activities in the movies that were beyond the normal range of human sexual activity as he knew it to be from dealing in this area with a great many patients and with a great many people at large; (A 72) that his opinions came from surveys made by himself on sexual attitudes; that he had seen only half of the film, "Magic Mirror" and had never testified in a film case before, (A 73) but had in two other cases involving obscenity; one in Federal Court in New Orleans and the other in Memphis; that Mr. Jack Peebles in New Orleans retained him in the former case which was still unresolved and that Mr. Smith retained him in the later case where the material was found to be not obscene. (A 74)

Asked if sex films had a therapeutic value, he stated,

yes, for that portion of the community that would like to see this kind of material or had curiosity about it. Asked if such a film would stimulate an interest or curiosity in sex, he answered, "I would hope that the normal healthy American male or female would be sexually stimulated by sexual material." (A 74) Asked for what purpose the sex film was made, he stated, "The only value I can see in this kind of film would be perhaps some educational value for persons who are curious about this kind of thing and perhaps some amusement value." (A 75)

Asked if sexual activity in his judgment would have to either have one, an erect penis, or two, a worldly view of the insertion for intercourse to be taking place before he would determine it was sexual intercourse, he answered, "Yes, sir." (A 77)

Asked if the orgy scenes would contribute to the welfare of the community, he stated, "It depends upon your moral judgments about some other things. For instance, if a couple was curious about wife swapping, or something like this and they could substitute some fantasy by seeing a film such as this rather than the actual thing, I think it might be good for the community. (A 78) Asked whether such a scene could encourage someone who had not considered wife swapping to experiment in this field, he said, "No, I don't believe so," and stated that they serve as a fantasy substitute more than they do to encourage activity and that "the life of the action of these movies and books is around four hours, that they don't stimulate (psychologically) much beyond four hours." (A 78)

Asked for what purpose these films were produced, he answered, "For entertainment, to try to draw in a crowd, to fill the theater up." (A 79) Asked if a nude female in the act of fellatio would be entertainment, he answered, "Look-

ing at this kind of material has provided entertainment for a great many hundreds of years in one form or another. (A 80) Asked if the films provided entertainment or supplied a morbid curiosity in sex, he answered that the person who goes inside to make trouble rather than to be entertained is morbid. He stated that the films did not contribute anything to his welfare, "and it didn't stimulate me either as far as that goes." He stated he would not pay $3.00 to see either one of these films. (A 81)

On redirect examination by defense counsel Smith, Dowd stated that he had first been called to testify in the case on Monday morning and that at that time he was advised as to what the films contained. (A 81) He also stated that he had come to the trial with the understanding that if, after seeing the films, he had a different opinion or the films were other than as were described to him, he would not testify. (A 82)

On questioning by the Court he was asked the significance of the scene in "Magic Mirror" at the end where a young man was shot by a police officer and there was this dramatic gushing of blood as he is killed, "there was no emotion shown on the part of the girl as to the death and all the rest of the rather blase approach towards it, what relationship does that have, . . . does that exacerbate sex feelings or what, what does it do?" (A 82) He answered, "By violence, not only in any film, but as far as I am concerned they don't need to do that kind of thing . . . what I really object to, a few weeks ago, four weeks ago or so there was a Life Magazine that comes into my home. . . . showing heads lopped off or who had committed Hari Kari just grizzly, gastly things that to me are obscene and should not be permitted to intrude in my home, and this I don't approve of even in these movies or in Life Magazine or anywhere

else. Apparently our society is filled with this and it does intrude on us." (A 83) Asked if he perceived that to be for the purpose of arousing greater reaction on the part of the viewer, (A 83) he stated, "I can't imagine that it would and therefore I can't imagine why they put it in.... This seems to be true of a lot of these sexually oriented magazines and things .... they will have a death at the end and I don't really know why." (A 83)

At the conclusion of Dowd's testimony the defense rested.

On April 12, 1971, Judge Etheridge filed his order holding both films not obscene and dismissing the actions. That order read, in part, as follows:

> "The State contends that the motion pictures under review in the above actions are obscene. The titles of the films are 'It All Comes Out in the End' and 'Magic Mirror,'
>
> "Assuming that obscenity is established by a finding that the actors cavorted about in the nude indiscriminately, then these films may fairly be considered obscene. Both films are clearly designated to entertain the spectator and perhaps, depending on the viewer, to appeal to his or her prurient interest. The portrayal of the sex act is undertaken; but the act itself is consistently only a simulated one if, indeed, the viewer can assume an act of intercourse or of fellatio is occurring from the machinations which are portrayed on the screen. Each of the films is childish, unimaginative, and altogether boring in its sameness.
>
> "It appears to the Court that the display of these films in a commercial theater, when surrounded by requisite notice to the public of their nature and by rea-

sonable protection against the exposure of these films to minors, is constitutionally permissible.[12]

"IT IS THE JUDGMENT OF THIS COURT THAT the films, even though they display the human body and the human personality in a most degrading fashion, are not obscene.

"The actions against the Defendants, therefore, are

---

[12]When this Court granted the petition for writ of certiorari herein, its original order of June 26, 1972, read, in part, as follows: "The parties are requested to brief and argue in addition to those questions presented in the petition the following question: 'Whether the display of any sexually oriented films in a commercial theatre, when surrounded by notice to the public of their nature and by reasonable protection against exposure of the films to juveniles, is *constitutionally permissible,*'" (Our emphasis.) Through some unpublished subsequent order, the last two words of the original order (and the sense of the jurisdictional question) were changed to read "constitutionally protected." See *Paris Adult Theatre I et al v. Lewis R. Slaton et al.*, U.S. , 33 L.Ed.2d 331, S. Ct. (June 26, 1971). Amicus thought the jurisdictional question, as originally phrased, to be more in point and would hope that this Court would come to grips with that issue in writing its opinion.

Judge Etheridge's order held that the exhibition of the films is constitutionally *permissible* and that the policy of the State of Georgia did not proscribe the same. In its opinion, the Georgia Supreme Court said that the judge was wrong, that the judicial policy of the State of Georgia *does* proscribe the same as a *matter of law* and, further, that the films are hard-core pornography. If a majority of this Court adopts the views of the late Justice Harlan re the role of the Federal Government in such matters and finds, as it surely must, that these films are hard-core pornography, then it must also find that the films are condemned as a matter of federal policy and federal law. See Point I A 1 at page 87.. Under this view, the Oregon State Legislature might revoke its penal laws dealing with the subject of obscenity, but could not thereby create property rights in "hard-core pornography," so as to create a haven from which to carry on an interstate business which violated the federal statutes. Nor could the State Legislature deny to its citizens their "federal and civil rights" under our Judaeo-Christian federal government, one of which is the right of the family to be free from the debasing influence of such materials in the communities. (See Portland, Ore. and Astoria, Ore. news articles on this problem at Appendix F, pages 5 to 6..) If *Roth* is correct, then such rights attach to citizenship in every *civilized* society. See Point I A 1 at page 87.

dismissed.

"This 12th day of April, 1971."

"On November 5, 1971, the Supreme Court of Georgia, after viewing the films, reversed the trial court decision by Superior Court Judge Etheridge. In its original opinion, dated Nov. 5, 1971, the Court in an unanimous decision, followed its three previous decisions which had affirmed temporary injunctions in three motion picture film cases: *Evans Theatre Corp. v. Slaton*, 227 Ga. 377, 180 S.E.2d 712 (Mar. 4, 1971); *Walter v. Slaton*, 227 Ga. 676, 182 S.E.2d 464 (May 13, 1971), and 1024 *Peachtree v. Slaton*, 184 S.E.2d 144 (Oct. 7, 1971). In limiting its review to the "probable cause" issue, the Georgia Supreme Court held the trial court erred in dismissing the temporary injunction. In its original opinion, the Court said:

> "As was pointed out in Walter v. Slaton, supra, the initial hearing in this kind of proceeding presents for the judge's decision only the question of whether there is probable cause to hold the material in question to be obscene, and therefore, whether the exhibition of a motion picture or the distribution of literature shall be temporarily enjoined until the ultimate question of obscenity can be passed upon by a jury. Therefore, 'on the hearing of an application for an interlocutory injunction, the presiding judge should not undertake to to finally adjudicate issues of fact, but should pass on such questions only so far as to determine whether the evidence authorizes the grant or refusal of the interlocutory relief . . . ."

This original opinion, a copy of which appears hereinafter at Appendix A-1 through A-9, overlooked a stipulation in the record by the attorneys which waived a jury trial and

provided for a final judgment to be rendered by the trial court judge.[13] See Statement of Facts, at page 10 supra. Upon the filing of petitions for a rehearing by both parties calling this matter to the Court's attention (A 7, 9), the Georgia Supreme Court on November 18, 1971, corrected the matter by nunc pro tunc order and filed a substitute opinion. At the same time it also denied both petitions for a rehearing. The final decision of the Georgia Supreme Court, as reported in 228 Ga. 343, 185 S.E.2d 768 (Nov. 5, 1971) overruled the finding of the trial judge and held both films to be hard-core pornography and obscene as a matter of law.

SUMMARY OF ARGUMENT

I

Somehow, the moral climate in these United States has changed during the past 15 years – a deterioration of major proportions has taken place. Relying upon the value of one picture, as compared to one thousand words, an attempt has been made to rivet this Court's attention on reality by following Solicitor-General Rankin's argumentation in *Roth-Alberts*. Attached to this brief at Appendices, C, D, and E

---

[13]It is important that this Court focus its attention on the entire Georgia procedure, There is an intense need throughout this Nation for a solid procedural precedent upon which other states might rely in moving in the courtroom against the deluge of obscenity. Under the Georgia procedure, upon a finding of "probable cause" the trial court is required to issue a temporary injunction. Compare Wisconsin v. I, A Woman – Part II 191 NW2, 897, 901 (Nov. 30, 1971). This procedure provides law enforcement with a quick and effective remedy. At the same time, the rights of the defendant are safeguarded. If the defendant sincerely desires a quick, final adjudication as to the "obscenity" issue, he can consolidate the hearing on the temporary injunction with the hearing on the final injunction, as in the Paris Adult Theatre appeal herein.

are photographic representations by way of time-motion studies, of a cross-section of the motion picture fare currently playing in this Nation's capitol. Three of the films *now* playing in September-October 1972 are "Deep Throat," "School Girl" and "Sticky Situation."

Amicus believes, as Sociologist William Kephart has recently stated, that we are *not* living in an era of moral erosion. Erosion, by definition, is a slow, uneven process which is not visible. What we are witnessing, is an era of lasceration, which is *highly visible*. It would appear that we are due for a change and the time to begin is *now!*

The motion picture films "It All Comes Out In The End" and "Magic Mirror" are obscene in the "international" sense – "hard-core pornography." As such they are *condemned* under our federal constitution. In its opinion in *Roth-Alberts*, this Court noted that it was the universal judgment of civilized nations that obscenity should be proscribed.

It is a "Judaeo-Christian" culture which this Court is called upon to interpret. According to that "Judaeo-Christian" base, each citizen has and enjoys a personal civil right to live in an area which is free of the debasing influence of public indecency.

During the past 15 years, a blanket of confusion has engulfed the motion picture production area. That industry's understanding of the public responsibility which it bears under this Nation's obscenity laws has been almost destroyed. Such confusion is due in no small part to the failure of this Court to enunciate a judicial philosophy which truly reflects the public mores which have governed this Nation since its founding. A casual reference to, and brief reflection on the moral laws of this Nation dealing with sexuality

shows that such pulbic mores do *presently* exist and codify the *"National standards"* which this Court has been seeking to enunciate. Amicus has attached at Appendix B a state-by-state survey of those laws which deal with lewdness, indecent exposure, obscenity, prostitution, sodomy, adultery, fornication, incest and profanity.

This Court has on many occasions stressed community ethical values as the basis for constitutional adjudication and has repeatedly said that "In an unbroken series of cases extending over a long stretch of this Court's history, it has been accepted as a postulate that the primary requirements of decency may be enforced against obscene publications." This Court has also said that the values of the culture can often be detected from the practices of the states. In reviewing the Georgia Supreme Court's ruling, this Court must examine the background of this Nation's well-established ethical values.

One just does not fornicate in public, be it actual or simulated – nor may he on the motion picture screen. Those "values" exist for the benefit of the family unit which is at the very core of government in our Judaeo-Christian culture.

The common standards of right and wrong, as embodied in the law, require that both films be found to be obscene and a matter of law. The Courts have always been willing to take judicial notice of facts of a common or general knowledge and facts which are uncontrovertible.

The performance of sexual intercourse in public, whether real or simulated, live or as part of a motion picture film is against public policy and obscene per se. Justice Douglas has finally been forced to the wall. Having agreed in *Roth-Alberts* that there is nothing in the constitution which prevents a state from proscribing conduct on the grounds of

good morals, and acknowledged that the First Amendment does not permit nudity in public places, adultery or other phases of sexual conduct, he must now tell us how this Court can prevent any State Court from "enjoining" such *conduct* on the screen. See here the time-motion studies for the films "Magic Mirror" and "It All Comes Out in The End" appearing at pages 11-83 of Amicus' brief. Since oral Sodomy is a crime against public morals, then there is no logical argument which can justify the filming of such conduct and displaying it on the public screen. The Supreme Court of Georgia has, in no uncertain terms, stated "If any semblance of civilization is retained in our country, the States must have standards of conduct permissible in public. There is little difference in the effect on the public between lewd conduct in public areas and lewd conduct explicitly performed on a motion picture screen for the viewing of the public."

Where obscenity per se exists, the Court can take judicial notice of that fact, and no further evidence on such issue is necessary. The test, as repeatedly voiced in the courtroom, for obscenity per se is; "whether reasonable men could not differ, and could come to but one conclusion, i.e. that the material or performance is sexually morbid, grossly perverse and bizarre."

The legal principle upon which the Georgia Court's decision is based, i.e., that the public nuisance approach can be applied to restrain obscenity, is fundamental to our law. Under the common law, obscenity, indecency and lewdness were a public nuisance and could be abated by injunction. Joyce in his text "Law of Nuisances" defines public nuisance as an act which offends public decency. In its previous decision in the *Evans Theater* case (which this court

refused to review) the Georgia Supreme Court ruled that a prosecuting attorney had an inherent right to bring an action to enjoin a threatened public nuisance, and such right included the right to stop the exhibition of films which were contrary to the standards of decency of the community as a whole. Other state courts have similarly ruled.

It should be noted that the Georgia legislature has voiced a similar "intent." In Section 61-116 of the Georgia Code, the state legislature, in voiding all leases for structures used for prostitution, expanded the definition of "prostitution" "to include the offering or giving of the body for sexual intercourse, sexual perversion, *obscenity*, and/or lewdness for hire . . . "

In enjoining such conduct, the Georgia Supreme Court was not attempting to reach private morality – its aim was to control and regulate public morality, which affects the people as a whole. The great majority of people believe that the morals of "bad" people do, at least in the long run, threaten the security of the "good" people. Such moral beliefs, when not demonstrably erroneous, are a proper basis for legislation. The interest being protected, in such cases, is the right of family to shape the moral notions of their children, and the right of the general public not to be subjected to violent psychological affront.

On this latter point, this Court has recognized in *Mugler v. Kansas* that the power to determine what is offensive to public morality is lodged in the legislative branch of government, and not in this Court. This Court's rulings in *Redrup v. New York* and later cases citing *Redrup*, are a clear violation of the principle voiced in *Mugler v. Kansas*.

The indirect effects of obscenity were recognized by Justic Harlan in *Roth-Alberts* where he stated: "The State

can reasonably draw the inference that over a long period of time the indiscriminate dissemination of materials, the essential character of which is to degrade sex, will have an eroding effect on moral standards." The long range, indirect effects inference, acknowledged by Justice Harlan, was also recognized by a majority of this Court in *Ginsberg v. New York.*

In a civilized society "hypocrisy is the complement that vice pays to virtue." It matters not that, in our present morally weakened society, there are many members of our "adult" community who may personally find it difficult to maintain high principles. It is one thing to say that they have a right to lead an immoral life; it is another thing to say that they have a constitutional right to propagate that immorality in the community. This Court's decisions in *U.S. v. Reidel* and *U.S. v. Thirty-Seven (37) Photographs,* in differentiating *Stanley v. Georgia,* explained that difference. It is inconceivable to Amicus that *Reidel* and *Thirty-Seven Photographs* have not already decided the questions herein.

There is a justifiable ground for the regulation of obscenity in whatever form it might take, whether it be criminal prosecution, qui tam action, injunction, or by some or all of the remedies in combination. That choice is in the state courts and state legislatures.

The films "Magic Mirror" and "It All Comes Out in The End" are clearly obscene as a matter of law. See here, the time-motion studies at pp 11-83.

ARGUMENT

INTRODUCTION

When this Court, a little over 15 years ago, heard arguments on the obscenity issue in *Roth v. U.S.*, 354 U.S. 476, hard-core pornography was a rarely seen under-the-counter item. At that time, the Federal Government worked hard at keeping it under control. In the Government's brief in *Roth v. U.S.*, (at page 34) the Solicitor-General identified "hard core pornography" as one of three categories of materials which were caught in the net of the Federal Obscenity Statute, and estimated the same to encompass 90% of the total materials actually caught under the Federal Statute. To make sure that the individual members of this Court understood what was meant by that "underworld' term and that rarely seen item, the Solicitor-General, by letter to the Clerk of this Court, dated Apr. 19, 1957, sent numerous samples of actual hard-core pornography to the Court.

Somehow, the moral climate in these United States has changed during the past 15 years – a deterioration of major proportions has taken place which, in turn, has fed itself back into the system, and accelerated the rate of decline. Nowhere is this change more apparent than in the area of public morals (sexual). Amicus doubts that this modern phenomenon has escaped the attention of any member of this Court; yet, recognizing the tragic certitude of Pope's Quatrain on the "Monster Vice"[14] and relying upon the value of one picture when compared with the use of words, an attempt has been made herein to rivet this Court's attention on reality by following Solicitor-General Rankin's illus-

[14]See footnote 4, supra, at page 4.

trative argumentation noted above.[15] Attached to this brief, at Appendices C , D and E are photographic representations, by way of time-motion studies, of a cross-section of the motion picture fare currently playing in this Nation's capitol as this Court sits in judgment on the recent actions taken by the Supreme Court of Georgia in their attempt to bring under control the proliferation of hard-core pornography on the public motion picture screens in that State.

The three motion picture films, "School Girl," "Deep Throat" and "Sticky Situation," which appear as time-motion studies in the Appendix herein, are presently playing at the Trans-Lux (14th and H St., N.W.), the New Plaza (New York Ave. and 14th St., N.W.) and the Playhouse (15th and H St., N.W.) Theaters, located in the shadows of the White House and the buildings which house Congress, and just a stone's throw from the stately structure and regal splendor in which this Court sits.[16] Amicus would emphasize that such films are no longer the under-the-counter items which this Court considered 15 years ago via the illustrative arguments used by Solicitor-General Rankin.[17]

---

[15]See also Amicus' Motion To Affirm in the "Vixen" case, No. 71-599, at Appendix E, pp. 2-5, wherein a cross-section of the new "Hollywood" in California was examined for purpose of argument by means of a diagram of a 4½ square mile area in the center of Hollywood, and photographs showing 74 retail outlets therein, dealing in hard-core pornographic materials.

[16]If this Court does not recognize such illustrated argument as autoptical proof of a society which is turning to Sodom and Gomorrah, then proof on the score does not exist, either in fact or in theory, which will instruct the justices on that proposition.

[17]Amicus submits that the justices of this Court, in considering the nature of their individual responses herein, would do well to re-examine the moral arguments made by the Solicitor-General in his brief in *Roth v. U.S., supra.* See Briefs of Counsel, appearing at 1 L.Ed.2d 2199-2203.

In the year 1972, they are openly advertised in the newspapers and favorably reviewed.[18] Nor is this situation local – those films are playing in cities around the Nation, both large and small, and without police opposition, which has been "throttled" by this Court.[19]

In a recent writing, published on Sept. 1, 1972, William Kephart, PhD, Professor of Sociology at the University of Pennsylvania, made the following observations on the above state of affairs, which are adopted herein as Amicus, opening remarks in support of affirmance herein:

> "It is sometimes said that we are living in an era of moral erosion, but this is obviously not so. Erosion, by definition, is a slow, uneven process, barely discern- to the human eye. From this perspective, our shoreline of morality is not eroding. *It is being lacerated.* (Emphasis his.)
>
> "Rates of divorce, venereal disease, crime and delinquency, adultery, fornication, rape, illegitimacy, and drug addiction increase with a tempo that makes economic inflation look sluggish by comparison. And while, in a sociological sense, it is not possible to pinpoint the relationship between these accelerating social problems on the one hand, and the increase in

---

[18] See the motion picture ad, appearing in the Washington Post, dated Sept. 25, 1972, at page B8, a copy of which appears at Appendix F , page 2 , showing "School Girl," "Deep Throat" and "Sticky Situation" playing at the Trans-Lux; New Plaza and Playhouse Theaters. See also the motion picture reviews for those films in Daily and Weekly Variety and Box Office, copies of which appear at Appendix F , pp. 12 et seq.

[19] See the Los Angeles Times Movie Ads of Oct. 7 & Sept. 29. 1972, copies of which appear at Appendix F , pages 3 and 7 , which announce that "School Girl" is now playing in its fourth month at the "Cinema Theatre" in Los Angeles.

obscenity and pornography on the other, this much seems certain: *if there were no relationship, the coincidence would be one of the most remarkable in the social history of our country.* (Emphasis his.)

"My own feeling is that obscenity and pornography are reflective of a permissive philosophy which – while it carries the familiar seal of the Warren Court and the automatic blessing of the intellectual community – goes against the mainstream of America.

"There are two bright spots in the kaleidoscope. (1) Moral laceration (which is highly visible) is easier to counteract than moral erosion (which is practically invisible over the short-term). For reasons best known to themselves, those who believe in a permissive philosophy have pushed the rest of us too far, too fast. A reaction, while certainly not inevitable, would seem to be the next stage in a logical sequence. (2) Self-evidently, our present laws dealing with morality do not reflect the will of the people. And as sociologists have been reminding us ever since Prohibition, laws mores are in vain.

"In the struggle between the 'moralists' and the immoralists, the latter have held the offensive for some time now. It would appear that we are due for a change. And as they say in the theater, Please to begin . . . ."

I.

THE MOTION PICTURE FILMS "IT ALL COMES OUT THE END" AND "MAGIC MIRROR" ARE NOT PROTECTED EXPRESSION UNDER THE FEDERAL CONSTITUTION. ON THE CONTRARY, THEY ARE CONDEMNED BY IT.

A. The Motion Picture Films "It All Comes Out In The End" and "Magic Mirror" Are Obscene In The *International* Sense (Hard-Core Pornography) And As Such Are *Condemned* Under The Federal Constitution.

In its opinion in *Roth-Alberts*, 354 U.S. 476, 1 L. Ed.2d 1498, 77 S.Ct. 1304 (June 24, 1957, this Court noted that it was the *universal judgment of civilized nations that obscenity should be proscribed.* See *Roth-Alberts* at p. 484:

". . . implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance. This rejection for that reason is *mirrored in the universal judgment that obscenity should be restrained*, reflected in the international agreement of over 50 nations, in the obscenity laws of all of the 48 States, and in the 20 obscenity laws enacted by the Congress from 1842 to 1956. . . ." (Our emphasis.)

If government is to have meaning, the laws must be interpreted according to the cultural base from which the law is drawn. According to that base "indecency" does have a concrete value. This Court has not yet seen fit to overrule *Church of the Holy Trinity v. United States*, 143 U.S. 457 (1892) It is a "Judaeo-Christian" culture which this Court is called upon to interpret. If the laws of the land, according to that "Judaeo-Christian" base, uniformly proscribe public indecency, then each citizen has and enjoys a per-

sonal right under that government to live in an area which is free of public indecency. Amicus submits that, for this Court to refuse to acknowledge and enforce that value is to fail to recognize civil rights in the citizenry accruing and existing under the Fifth, Ninth, Tenth and Fourteenth Amendments of the Federal Constitution and the corresponding sections of the State Constitution – civil rights which are enforceable under the law, irrespective of whether or not criminal penalties are attached.

During the past 15 years, a blanket of confusion has engulfed the motion picture production area and all but destroyed that industry's understanding of the public responsibility which it bears under this Nation's obscenity laws. such confusion[20] is due in no small part to the failure of this Court to enunciate a judicial philosophy which truly reflects the public mores which have governed this Nation since its founding. A casual reference to and brief reflection on the moral laws of this Nation dealing with sexuality, as codified by the state legislatures (see Appendix B pp. 1-16 is cogent proof that such public mores do presently exist and are well defined. See also, *City of Youngstown, Ohio v. DeLoreto*, 251 N.E.2d 291, 48 Ohio Op. 2d 393 at 400 (Sept. 10, 1969); *State of Ohio ex rel. Ewing v. Without A Stitch*, 57 Ohio Op. 2d 184 at 187 (July 9, 1971); and *State of Ohio*

---

[20]The Court in *People v. Kirkpatrick*, 316 N.Y.S.2d 37 (Oct. 28, 1970) had the following to say at page 42 on this general confusion as it related to the criminal law:

"There is perhaps no area of criminal law in such utter state of confusion and frustration as that visited upon the publication and dissemination of obscene material 'Confusion now hath made its masterpiece' (Macbeth, Act II).

"The confusion, in great measure, must be attributable to the incredible divergence of views of the men on the United States Supreme Court, to whom all look for guidance . . ."

ex rel. Keating v. Vixen, 272 N.E.2d 137 at 140, 27 Ohio St. 2d 278 (July 21, 1971).

1. THE COMMON STANDARDS OF RIGHT AND WRONG EMBODIED IN THE STATUTORY LAW OF THIS NATION AND THE STATE OF GEORGIA SHOULD BE APPLIED AS THE RULE OF LAW IN THIS CASE IN FINDING THE TWO FILMS TO BE OBSCENE AS A MATTER OF LAW.

It is the basic contention of Amicus that the eyes of this Court, in reviewing the Georgia Supreme Court ruling below, should be focused upon the concepts which support the statutes being applied by Respondents, that is the universal verity that lewdness and obscenity are public nuisances, which are abatable under the law, and the ethical values shared by this Nation, as a whole, as defined in the legislative halls and documented in state and federal statutes and city ordinances. A state-by-state survey of the Nation's laws dealing with lewdness, indecent exposure, obscenity, prostitution, sodomy, adultery, fornication, incest and profanity is attached as Appendix "B". Appellants submit that these laws define the national standards which everyone in the courtroom today is seeking to ascertain.[21] This Court has on many occasions stressed community ethical values as the basis for constitutional adjudication. *Adamson v. Calif.*, 332 U.S. 46, 91 L.Ed. 1903, 67 S.Ct. 1672 (Justice Frankfurter concurring opinion). *Louisiana ex rel Francis v. Resweber*, 329 U.S. 459, 470, 91 L.Ed.422, 67 S.Ct. 374 (concurring opinion). In *Kingsley Books, Inc. v. Brown*, 354 U.S. 436, 1 L.Ed.2d 1469, 77 S.Ct. 1325, handed down on the same date as the *Roth-Alberts* decision, 354 U.S. 476, 1 L.Ed.2d 1498, 77 S.Ct. 1304 (June 24, 1957), Justice

[21] See footnote 12 at page 75.

Frankfurter, in speaking for the majority of that Court in a case closely paralleling the matter herein, said, at page 1473:

> "In an unbroken series of cases extending over a long stretch of this Court's history, *it has been accepted as postulate* that 'the primary requirements of decency may be enforced against obscene publications.' Id. 283 U.S. at 716." (Our emphasis.)

In *Solesbee v. Balkcom* (1950), 339 U.S. 9, 16, 27, 94 L.Ed. 604, 70 S.Ct. 457, Reh. Den. 339 U.S. 926, 94 L.Ed. 1348, 70 S.Ct. 618, Justice Frankfurter wrote that due process

> "embodies a system of rights based on moral principles so deeply imbedded in the traditions and feelings of our people as to be deemed fundamental to a civilized society as conceived by our whole history. Due process is that which comports with the deepest notions of what is fair and right and just. The more fundamental the beliefs are, the less likely they are to be explicitly stated. But respect for them is of the very essence of the Due Process Clause. In enforcing them this Court does not translate personal views into constitutional limitations. In applying such a large untechnical concept as 'due process,' the Court enforces those permanent and pervasive feelings of our society as to which there is compelling evidence of the kind relevant to judgments on social institutions."

The values of the culture, Justice Frankfurter added, can often be detected *from the practices in the states*. He illustrated the point in this fashion: "The manner in which the states have dealt with this problem furnishes a fair reflection, for purposes of the Due Process Clause, of the underlying feelings of our society about the treatment of persons

who become insane while under sentence of death."

In reviewing the ruling of the Georgia Supreme Court which abated both films as a *matter of law*, this Court should judicially recognize that it was in the background of this Nation's well-established and shared ethical values that the producers of those films opted to move into the motion picture entertainment field and capitalize commercially via sensationalism, upon the natural abhorrence of civilized government to public displays of explicit sexual conduct. *One just does not fornicate in public, be it actual or simulated* – nor may he on the public screen. (See Judge Burke's opinion, infra at page 93 .) The relevant historical facts under consideration certainly encompass this Nation's ethical values, as reflected in the well-knit pattern of city, state and federal laws relating to public sexual conduct (such as laws dealing with nudity, fornication, prostitution, indecent exposure, sodomy, solicitation of unnatural sex act, etc.) Those values exist for the benefit of the family unit which is at the very core of government in our Judaeo-Christian culture and are deserving of this Court's strong support.

The common standards of right and wrong embodied in the statutory law of Georgia should be applied as the rule of law in this case in upholding the Georgia Supreme Court's finding that the films "It All Comes Out In The End" and "Magic Mirror" are UNLAWFUL AS A MATTER OF LAW. This was the view of the unanimous Ohio Court in *City of Youngstown v. De Loreto*, 251 N.E.2d 491 (September 10, 1969). In *De Loreto*, the court enumerated the state statutes and city ordinances which prohibited specific immoral conduct. From that the court deduced what the Moral Standards of Ohio People on Sex were. (See *De Loreto* at pages 500

and 501. See also *Ohio ex rel Ewing v. "Without A Stitch"*, 276 N.E.2d 655 at 659 (July 9, 1971) and *Ohio ex rel Keating v. "Vixen"*, 272 N.E.2d 137 at 141 (July 21, 1971).

It is the prerogative of this Court to take judicial notice of the laws of the State of Georgia relating to sexual morality and apply them in reviewing the issue of obscenity in this case.

The vast history of the Common Law and the statutes of the State of Georgia make clear those particular areas of public conduct which are so immoral, so contrary to the immemorial custom of propriety of the people, so opposite to the natural sense of conscience and justice of the people, so pervasively at odds with the community notions of right and wrong, so consistently maintained as illegal and contrary to Anglo-American public policy that their display and exhibition to the public, either live or recorded, is UNLAWFUL AS A MATTER OF LAW. Obscenity, public indecency, incest, lewdness, immoral exhibitions, sexual perversion, and sodomy et seq., all are enumerated acts the public portrayal of which a judge should recognize as being part of the Common Law specification of "obscenity." See Appendix B. – 4 "Georgia."

The courts have always been willing to take judicial notice of those facts and policies that are of general and incontrovertible knowledge. Such matters include those facts of a common or general knowledge that are well and authoritatively settled, not doubtful or uncertain, and known to be within the limits of the jurisdiction of the court. (28 Am. Jur.2d Sec. 84) They also have included a recognition of the ordinary instincts, passions, emotions, and motives which universally, in a greater or lesser degree, influence the actions and conduct of mankind. (28 Am.Jur.2d Sec. 114)

In addition, judicial notice has been extended to matters of public and social welfare (29 Am.Jur.2d Sec. 143) and the customs and usages of man which are generally known or accepted to an extent sufficient to make them matters of common knowledge. (28 Am.Jr.2d Sec. 121)

2. THE PERFORMANCE OF SEXUAL INTERCOURSE IN PUBLIC, WHETHER REAL OR SIMULATED, LIVE, OR AS PART OF A MOTION PICTURE FILM OR STAGE PLAY IS AGAINST PUBLIC POLICY AND AS SUCH IS OBSCENE PER SE:

By far the best legal opinion on this point of law is that of Judge Burke's speaking for the majority of the New York Court of Appeals in *Trans-Lux Dist. Corp. v. Bd. of Regents*, 248 N.Y.S.2d 857 (Mar. 26, 1964), at page 857:

> "While typically applicable to 'speech' and 'press' in the forms known to the framers, the guarantee of the First Amendment has been read to include anything that is asserted to be someone's way of saying something. The most familiar instances of this application are physical conduct and motion pictures (Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093; Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 72 S.Ct. 777, 96 L.Ed. 1098, supra). Cases involving conduct as a form of expression have been frequent in labor law and provide a useful illustration of the transition from a somewhat doctrinaire application of the First Amendment (see e.g., Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093, supra) to a realization that, while conduct may be speech, it still remains conduct and does not cease to present its unique problems of

social control. It is now the law that even peaceful picketing may be forbidden where it violates State labor laws that are not themselves designed as restrictions on freedom of speech (Local Union No. 10, etc., Plumbers Union v. Graham, 345 U.S. 192, 72 S.Ct. 383, 97 L.Ed. 946). Conduct that is proscribed for valid public purposes is not immune merely because engaged in with a view to expression (Giboney v. Empire Ice & Storage Co., 336 U.S. 490, 69 S.Ct. 684, 93 L.Ed. 834). For example, in People v. Stover, 12 N.Y.2d 462, 240 N.Y.S.2d 734, 191 N.E.2d 272, supra, app. dsmd. for want of a substantial Federal question, 375 U.S. 42, 84 S.Ct. 147, 11 L.Ed.2d 107, this court upheld an 'Aesthetic' ordinance prohibiting the display of soiled laundry on a clothesline in the defendants' front yard, despite the fact that the display was an expression of social protest.

"Films, by their nature, may lie on either side of the division between speech and conduct. The opinions of the Supreme Court reversing this court in the cases of advocacy of adultery and thematic sacrilege make that plain. But it also follows that if 'picketing may include conduct other than speech, conduct which can be made the subject of restrictive legislation' (Giboney v. Empire Ice & Storage Co. supra, 336, U.S. p. 501, 60 S.Ct. p. 690, 93 L.Ed. 834) then so may films. In this regard, it will be noted that the Supreme Court has not yet expressed its opinion in a case involving allegedly obscene behavior on the screen . . . ."

And at page 860:

"In Kingsley Intern. Pictures Corp. v. Regents, 360 U.S. 684, 79 S.Ct. 1362, 2 L.Ed.2d 1512, the opin-

ion of the court repeatedly distinguishes between the right to communicate any idea, however deviant from orthodoxy, and 'the manner of its portrayal' (360 U.S. p. 688, 79 S.Ct. p. 1365, e L.Ed.2d 1512). The 'freedom to advocate ideas' was protected, not any supposed right to behave lewdly in a public place. Even more to the point is the concurring opinion of Mr. Justice Clark who wrote: 'I see no grounds for confusion, however, were a statute to ban "pornographic" films, or those that "portray *acts* of sexual immorality, perversion or lewdness." If New York's statute had been so construed by its highest court I believe it would have met the requirements of due process. Instead, it placed more emphasis on what the film teaches than on what it depicts. There is where the confusion enters.' '360 U.S. p. 702, 79 S.Ct. p. 1372, 3 L.Ed.2d 1512; emphasis in original).

"It is my view that a filmed presentation of sexual intercourse, whether real or simulated, is just as subject to State prohibition as similar conduct if engaged in on the street. I believe the nature of films is sufficiently different from books to justify the conclusion that the critical difference between advocacy and actual performance of the forbidden act is reached when simulated sexual intercourse is portrayed on the screen. I take it to be conceded that New York may constitutionally prohibit sexual intercourse in public. As Mr. Justice Douglas acknowledge, dissenting in Roth v. U.S. . . . in contrasting books with conduct: 'I assume there is nothing in the Constitution which forbids Congress from using its power over the mails to proscribe *conduct* on the grounds of good morals. No one would

suggest that the First Amendment permits nudity in public places, adultery, and other phases of sexual misconduct' (emphasis in text).

"This observation is equally pertinent, of course, whether the sexual exhibitionism is done spontaneously in the street or in theaters for money (e.g., Penal Law, Consol. Laws. c.40, §§ 43, 1140, 1140-a, 1140-b). There have been many cases dealing with what sort of behavior was covered by statutes against sexual exhibitionism and the like, but they were solely concerned with statutory interpretation, never, obviously, the First Amendment. (Miller v. People, 5 Barb. 203; People v. Burke, 243 App. Div. 83, 276 N.Y.S. 402, affd. 267 N.Y. 571, 196 N.E. 585; People v. Mitchell, 296 N.Y. 672, 70 N.E.2d 168; People v. Dash, 282 N.Y. 632, 25 N.E.2d 979.)

"This comparison between the acknowledged competence of the State to forbid public or semi-public sex displays and its power to exert similar control over similar conduct depicted on the screen is not intended to imply any broad theory of legal equivalence between real conduct and a filmed imitation. Indeed, the meaningful comparison exists only in a narrow range of cases. In most instances, the real conduct is illegal because of what is accomplished by the person, as in murder, forgery, or adultery. In such cases, the filmed dramatization obviously does not share the evil aimed at in the law applicable to the real thing. Where, however, the real conduct is illegal, not because of what is accomplished by those involved, but simply because what is done is shocking, offensive to see, and generally believed destructive of the general level of moral-

ity, then a filmed simulation fully shares, it seems to me, the evil of the original. In such cases, the free expression protection of the First Amendment must apply to both or neither. It makes no sense at all to say that the conduct can be forbidden but not the play or film.

"The pattern of statutory regulation in New York aims at offensive – more properly, obscene – displays of conduct whether in the street (Penal Law, §§ 43, 1140, 1140-b), on the street (Penal Law, § 1140-a; People v. Vickers, 259 App. Div. 841, 19 N.Y.S.2d 165 – lewd dance) or on the screen (Penal Law, §§ 1140-a, 1141; Education Law, § 122). These laws care not about the communication of ideas (see Stromberg v. California, 283 U.S. 369, 51 S.Ct. 532, 75 L.Ed. 1117); they are aimed at certain narrow sorts of conduct. It seems to me, therefore, that if the defendants in People v. Stover, supra, could constitutionally be prohibited from selecting the forbidden form of conduct as the vehicle for the communication of their protest, then this petitioner cannot choose acted-out sexual intercourse as the vehicle for its art (see, also, People v. Vickers, supra, where a performer was prohibited from choosing a certain sort of dance as her vehicle, and the 'nude gymnasium' prohibited by Penal Law, §§ 1140-b). Numerous other instances also suggest themselves.

"If we can accept the obvious – that sexual intercourse whether performed in the park or simulated on the stage or screen is in itself a form of conduct (in which the public have an interest), it is apparent that when this defendant chooses to use it as a vehicle for the expression of art it has 'brigaded' the communica-

tion (to the extent that it is 'communication') with conduct completely. In so doing the petitioner has subjected itself to such regulations as are appropriate to the conduct when engaged in for reasons having nothing to do with expression. There is otherwise no difference between advocacy and action. (Compare Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093, with Local Union No. 10, etc., Plumbers Union v. Graham, 345 U.S. 192, 73 S.Ct. 585, 97 L.Ed. 946.) 'Freedom of expression can be suppressed if, and to the extent that, it is so closely brigaded with illegal action as to be an inseparable part of it' (Douglas, J., dissenting in Roth v. United States, 354 U.S. 476, 514, 77 S. Ct. 1304, 1324, 1 L.Ed.2d 1498)."

Judge Burke's closing principle, stated at page 863 is a complete answer to the claims of petitioner that the "educational" and "entertainment" aspects, testified to by defense witness Dowd, constituted "value" and offered a meritorious defense. (See Dowd's testimony at pages 70 to 73).

"To all argument predicated on artistic merit as decisive of the constitutional question, it is sufficient answer to say that artists are not such favorites of the law that they may ply their craft in the teeth of a declared overriding public policy against pornographic displays, Since no other profession is privileged to bend public morals, public and law to its internal craft standards, then neither should producers of films."

A majority of the California Supreme Court appear to be in agreement with Justice Burke. See *Billie Dixon, Riachrd Bright and Michael McClure v. Municipal Court of City and County of San Francisco*, 267 Cal. App.2d 875, 73 Cal. Rptr. 587 (Dec. 2, 1968). Hearing denied January 29, 1969.

(with Justices Peters, Tobriner and Mosk dissenting) involving the stage play "The Beard." Justice Devine, speaking for an unanimous court (Court of Appeal), First District, Division 4) said at page 589:

> "There are several sexual acts which, although not criminal in themselves, as is oral copulation, doubtless would be deemed by many a trier of fact applying First Amendment standards to be obscene even when contained in a play or a dance or other performance with full First Amendment protection. It is entirely possible that the simulation of such acts, and of the act in 'The Beard,' would itself be an obscene act. The positions and motions of the performers, the duration of the act, the accompanying dialogue and all of the circumstances, taken together with the content of the entire work, may establish an imitation of an actual deed to be obscene.

The same principle was recently voiced by the Georgia Supreme Court in its decision in *Evans Theatre Corp. et al. v. Slayton (supra)* holding the motion picture film "I Am Curious (Yellow)" to be enjoinable as a public nuisance because of the sexual activity portrayed therein:

> "The Criminal Code of Georgia makes penal a lewd performance in public, including an act of sexual intercourse and a lewd appearance in a state of nudity. Code Ann. § 26-2011 (Ga. L. 1968, pp. 1249, 1301). such acts are prohibited, not because of the injury inflicted on other individuals, as in the case of murder or robbery, but because the acts are offensive to the majority of the people. If any semblance of civilization is retained in our country, the States must have standards of conduct permissible in public. *There is little difference in the effect on the public between lewd con-*

duct in public areas and lewd conduct explicitly performed on a motion picture screen for the viewing of the public." (Our emphasis.)

3. WHERE OBSCENITY PER SE EXISTS THE COURT CAN TAKE JUDICIAL NOTICE OF SUCH FACT AND NO FURTHER EVIDENCE ON SUCH ISSUE IS NECESSARY.

In *Mitchum v. State of Florida*, 251 So.2d 298 (Aug. 12, 1971) the District Court of Appeal of Florida made the following comment as to the application of judicial notice to material which was uncontrovertibly obscene

"Examination of appellants' argument under this point indicates that the real issue raised is the contention that the absence of testimonial evidence, separate and apart from the magazines themselves considered as exhibits, renders the order of the lower court prejudicially erroneous and therefore reversible.

"In support of the latter proposition, appellants rely heavily on Justice Frankfurter's concurring opinion in Smith v. California, 361 U.S. 147, 80 S.Ct. 215, 4 L.Ed.2d 205, reflecting his view, not that of the court, that expert testimony is necessary to a finding of obscenity by a court. That view being found only in a concurring opinion is, of course, not binding upon us as precedent nor are the holdings in the obscenity cases from several of our sister states which require testimonial evidence as a predicate for a finding of obscenity necessarily binding on this court. We have read them, of course, and while they appear sound and scholarly, they simply do not reflect our view of the law relating to the subject matter. In essence, those

cases encroach upon the entire concept of judicial notice as approved by our courts as well as those of other jurisdictions. *Long ago, it was held that in proper circumstances 'judicial notice' is superior to evidence since it fulfills the object which evidence is designed to fulfill and makes evidence on the point established by judicial notice unnecessary.* Amos v. Moseley, 74 Fla. 555, 77 So.619. It is designed as the cognizance of certain facts which judges and jurors may properly take and act upon without proof, because they already know them. United States v. Hammers, D.C., 241 F. 542. Courts are presumed to know what everyone knows, 13 Fla. Jur., Evidence § 14. Thus, the question resolves itself into whether the materials here involved are of such character as to establish circumstances whereunder the court may determine the obscenity question without evidence. (Emphasis ours.)

"We hold that the materials herein are 'hard-core pornography' and therefore within the rule announced in United States v. Wild, 422 F.2d 34 (2d Cir. 1970) cert. denied 402 U.S. 986, 91 S.Ct. 1644, 29 L.Ed.2d 152, reh. den. 403 U.S. 940, 91 S.Ct. 2242, 29 L.Ed.2d 720. There the government introduced no evidence other than the materials themselves which was claimed to be error. In rejecting the contention, the Court of Appeal reviewed the pertinent cases and held as follows: ***.

"In a remarkably similar case in which a conviction under section 1461 was unanimously affirmed, Judge Prettyman wrote:

"'Most of the difficulty which enshrouds the discussion of the law concerning obscenity and filth develops upon consideration of books and magazine

articles. Here arise problems of scienter, the meaning and effect of the whole, the value of the work to proper interests of the public, the contemporary community standards in similar matters, and other baffling problems under our precious right of free speech. Discussed in several opinions in Smith v. California (361 U.S. U.S. 147, 80 S.Ct. 215, 4 L.Ed.2d 205). But we have no such problem in the case of bar. These are stark, unretouched photographs – no text, no possible avoidance of scienter, no suggested proper purpose, no conceivable community standard which would permit the indiscriminate dissemination of the material, no alleviating artistic overtones. These exhibits reflect a morbid interest in the nude, beyond any customary limit of candor. They are "utterly without redeeming social importance," * * * *

"'*We think that photographs can be so obscene – it is conceivably possible that they be so obscene – that the fact is uncontrovertible.* These photographs are such. United States v. Womack (Womack v. United States), 111 U.S. App. D.C. 8, 294 F.2d 204, 205-206 (footnote omitted), cert. denied 365 U.S. 859, 81 S.Ct. 826, 6 L.Ed.2d 822 (1961).' (Emphasis ours.)

"See also, Kahm v. United States, 300 F.2d 78 (5th Cir.), cert. denied 369 U.S. 859, 82 S.Ct. 949, 8 L.Ed. 2d 18 (1962); United States v. Davis, 353 F.2d 614 (2d Cir. 1965), cert. denied 384 U.S. 953, 86 S.Ct. 1567, 16 L.Ed.2d 549 (1966). Cf. Manual Enterprises v. Day, 370 U.S. 478, 489-490 and n. 13, 82 S.Ct. 1432, 8 L.Ed. 2d 639 (1962) (opinion of Harlan, J.) * * * *

"(5,6) The above views expressed by the court in Wild were adopted by this court in the informative opin-

ion of this court in Collins v. State Beverage Department, 239 So.2d 613 (Fla. App. 1970). It is clear then that the rule in this jurisdiction is that if the materials before the court are what is termed 'hard-core pornography' no testimonial evidence is necessary to support a finding of obscenity * * * *."

In *Morris v.* U.S., 257 A.2d 341 (Dec. 2, 1969) the Court voiced the following test for material which was "obscene *per se*," i.e., obscene as a matter of law:

"Although the definition and elements of obscenity have been authoritatively stated in *Roth* and *Memoirs*, definition of the oft-used terms 'hard-core obscenity, and 'obscenity per se' has been neglected by the Supreme Court. The Court of Special Appeals of Maryland has faced this problem before and has defined these terms in the following language: Hard-core pornography or obscenity per se is obscenity which 'focuses predominantly upon what is sexually morbid, grossly perverse and bizaare without any artistic or scientific purpose of justification.' There is no desire to portray (it) in pseudoscientific or 'arty' terms. It can be recognized by the insult it offers, invariably, to sex and to the human spirit. It goes substantially beyond customary limits of candor and deviates from society's standards of decency in the representation of the matters in which it deals. It has a patent absence of any redeeming social value; it speaks for itself and screams for all to hear that it is obscene. It is not designed to be a truthful description of the basic realities of life as the individual experiences them but its main purpose (is) to stimulate erotic response. . . . No proof, other than the viewing of it, is required to deter-

mine if it is, in fact, obscene.

"It is clear to this court that where obscenity per se is involved, the prosecution is not required to offer any evidence (beyond the material or performance itself) that it is pornographic or obscene or that it is below the national community standards. Womack, supra; Hudson, supra. *In other words, if reasonable men could not differ and they could come to but one conclusion, i.e., that the material or performance is sexually morbid, grossly perverse, and bizarre, without any artistic or scientific purpose or justification,* then the Government on its case-in-chief need not offer any evidence of national community standards." (Our emphasis.)

See also *Wilhoit v. U.S.*, 279 A.2d 505, cert. den. 30 L.Ed.2d 546 (Dec. 14, 1971) (Douglas would grant cert. and set the case for argument). *Mitchum v. State of Florida*, 251 S.2d 298 at 301 (Aug. 12, 1971); *U.S. v. Womack*, 111 U.S. App. D.C. 8, 294 F.2d 204, cert. den. 365 U.S. 859, 81 S.Ct. 826, 5 L.Ed.2d 822 (Mar. 27, 1969); *U.S. v. Wild*, 422 F.2d 34 (Oct. 29, 1969), cert. den. 402 U.S. 986, 91 S.Ct. 1644, 29 L.Ed.2d 152, rehrg. den. 403 U.S. 940, 91 S.Ct. 2242, 29 L.Ed.2d 720 (June 21, 1971); *Mitchum v. State of Florida*, 244 S.2d 159, 160 (Jan. 26, 1971); *Collins v. State Beverage Dept.*, 239 S.2d 613, 316; *Marks v. State of Florida*, 262 S.2d 479 (May 28, 1971); *Kaplan v. U.S.*, 277 A.2d 477 at 479 (May 10, 1971); *Illinois v. Ridens*, 282 N.E.2d 691 at 695 (Mar. 21, 1972); *State of Minn. v. Getman*, 195 N.W.2d 827 at 829 (Mar. 17, 1972); Justice Herndon dissenting in *Harmer v. Tonylyn Productions*, 100 Cal. Rptr. 576, 579 (Mar. 2, 1972); *United Theatres of Florida v. State ex rel Gerstein*, 259 S.2d 210, 212

(Feb. 15, 1972); U. S. *v. Miller*, 455 F.2d 899 at 902 (Mar. 22, 1972).

In *Boreta Enterprises, Inc., v. Dept. of Alcohol Beverage* 2 Cal. 385, 84 Cal. Rptr. 113 at 123 (Feb. 26, 1970), Justice Sullivan writing for a majority of the California Supreme Court, acknowledged that the conduct at issue could be so extreme as to properly conclude that the subject matter was "*per se*" contrary to public morals, at page 123:

> "This, however, is not the focal point of our present inquiry. We here examine the power invested by the Constitution in the Department to revoke a specific alcoholic beverage license 'if it shall determine *for good cause* that the . . . continuance of such license would be contrary to public . . . morals . . . .' (Cal. Const. Art. XX, § 22, italics added; see fn. 4, *ante*.) This requires us to observe the distinction between the imperatives of the moral order and the mandates of the civil order. It is therefore the *public* morals, not the *private* morals of the officials or employees of the Department, however conscientious or well-intentioned, which must be the criteria in the instant case. In other words, in resolving the issue before us, our reference must be to the morals of the people, that is, to those of the community at large, of the whole body of the people. (See Duskin v. State Board of Dry Cleaners (1962), 58 Cal.2d 155, 163, 23 Cal. Rptr. 404, 373 P.2d 468; see definition of 'public,' Black's Law Dictionary (4th ed. 1951); Webster's Third New International Dict.) If by If by 'morals' we mean 'the moral practices of an individual, or culture; habits of life or modes of conduct' (Webster's op. cit., see 'moral') we think the term 'public morals' must be taken to mean the moral prac-

tices or modes of conduct 'pertaining to a . . . whole community; . . . relating to . . . the whole body of people or an entire community.' (Black's Law Dictionary, *supra*; Duskin v. State Board of Dry Cleaners, *supra*.)

"There may be cases in which the conduct at issue is so extreme that the Department could conclude that it is *per se* contrary to *public* morals. By this we mean that it is so vile and its impact upon society is so corruptive, that it can be almost immediately repudiated as being contrary to the standards of morality generally accepted by the community after a proper balance is struck between personal freedom and social restraint. . . ." (Italics theirs.)

In *Smith v. Commonwealth of Kentucky*, 465 S.W.2d 918, 920 (Feb. 26, 1971) the Kentucky Court of Appeals similarly followed the same rules:

"Appellant moved for a directed verdict of acquittal at the close of the Commonwealth's evidence, on the ground that no proof had been presented to show that the questioned matter was utterly without redeeming social value. The court properly overruled that motion, inasmuch as *the publication demonstrated on its face that it possessed no such redeeming social value. That determination was properly made as a matter of law in the circumstances of this case . . . .* " (Our emphasis.)

4. THE LEGAL PRINCIPLE UPON WHICH THE GEORGIA COURT'S DECISION IS BASED *i.e.*, THAT THE PUBLIC NUISANCE APPROACH CAN BE APPLIED TO RESTRAIN OBSCENITY, IS FUNDAMENTAL TO OUR ANGLO-SAXON LAW.

(a) UNDER THE COMMON LAW, OBSCENITY, INDECENCY AND LEWDNESS WERE A PUBLIC NUISANCE.

Obscenity or indecent exhibitions of a nature to shock the public sense of decency were a public nuisance and indictable at the Common Law. *Crain v. State*, 3 Inc. 193 (1951). In Perkins on Criminal Law, Foundation Press, 1954, Professor Rollin Perkins states, at page 336:

> "Obscene or indecent exhibitions of a nature to shock the public sense of decency are also public nuisances and indictable at Common Law. This label includes not only obscene and indecent theatrical performances or side shows, but other disgusting practices such as letting a stallion to mares in the streets or some other public place . . . ."

For a modern application of this principle to some of the current problems which face this Nation, see *Bloss v. Paris Township*, 157 N.W.2d 260 (Apr. 1, 1968) holding the operation of an outdoor drive-in theater showing motion pictures which "dwell on the subject of sex and the human anatomy" to constitute a public nuisance. In *Bloss*, the Michigan Supreme Court stated the following, as to the nature of such public nuisances, at page 261:

> "What is a public nuisance? Joyce, Law of Nuisances, Section 7, page 15, defines a public nuisance, inter alia, as an act which offends public decency.

Cited to Section 66, page 13, is the case of Hayden v. Tucker, 37 Mo. 214, in which it was held that the keeping of jacks and stallions within the immediate view of a private dwelling and a public highway is a nuisance which equity will enjoin as a 'disgusting annoyance perpetually bringing the blush of shame to modesty and innocence.' The factual difference between the Hayden and the instant case, is that there involved was a display of equine and here pictures of the human frame, is not a distinction calling for a different conclusion as to the nuisance question."

Similarly, in *Cactus Corporation d.b.a. The Apache Drive-in v. State of Arizona, ex rel Murphy*, 480 P.2d 375 (Feb. 9, 1971), the Court of Appeals of Arizona, Division 2, recently affirmed the judgment of the trial court which permanently enjoined The Apache Drive-in Theater from displaying, showing or running a motion picture film, entitled "Lysistrata," or any other motion picture film of the same character, on the grounds that such activity is or would be a public nuisance as defined by A.R.S. Sect. 13-601, which defines, in part, a public nuisance as:

> "Anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood, or by a considerable number of persons . . . ."

"On March 4, 1971, the Georgia Supreme Court, in an unanimous decision, upheld the *inherent right* of law enforcement officials to enjoin the motion picture film "I Am Curious (Yellow)" as a public nuisance. In *Evans Theatre Corp.*

et al. v. Slayton, Dist. Atty. of Fulton County, Ga. , 180 SE.2d 712 (Mar. 4, 1971), Presiding Judge Mobley, speaking for an unanimous court, said:

"We recognize the principle that equity will take no part in the administration of the criminal law. Code § 55-102. However, it has long been the rule in this State that the State has an interest in the welfare, peace, and good order of its citizens and communities, and that an action may be maintained at the instance of the prosecuting attorney to enjoin an existing or threatened public nuisance, even though the nuisance constitutes a crime punishable under the criminal laws. See: Lofton v. Collins, 117 Ga. 434 (3), 440 (43 SE 708, 61 LRA 150); Walter v. McNelly, 121 Ga. 114 (1), 115 (48 SE 718); Edison v. Ramsey, 146 Ga. 767 (92 SE 513); Dean v. State, 151 Ga. 371 (1) (106 SE 792, 40 ALR 1132); Gullatt v. Collins, 169 Ga. 538 (150 SE 825); Rose Theatre, Inc. v. Lilly, 185 Ga. 53 (1) (192 SE 866); Atkinson v. Lam Amusement Co., 185 Ga. 379 (195 SE 156); Forehand v. Moody, 200 Ga. 166 (36 SE2d 321); Norris v. Willingham, 204 Fa. 441 (50 SE2d 22); Thornton v. Forehand, 211 Ga. 568 (87 SE2d 865); Lee v. Hayes, 215 -Ga. 330, 331 (110 SE2d 624).

"The exhibition of an obscene motion picture is a crime involving the welfare of the public at large, since it is contrary to the standards of decency and propriety of the community as a whole. The welfare of the whole community is served by restraining the showing of such an obscene film.

"A court of equity was authorized to enjoin the exhibition of this obscene motion picture to the public."

In the *Evans Theatre Case*, this Court denied review. See Evans Theatre Corp. et al v. Slayton, Dist. Atty. of Fulton County, U.S. 30 L.Ed.2, 267 S.Ct. (Nov. 9, 1971). See also Judson v. Zurhorst, 30 Ohio Cir. 9, at Page 14, where the Ohio court said:

> "There remains one contention for the granting of this injunction on the facts alleged in the petition. That is on the alleged indecency of the pamphlet. The law does not favor obscenity or indecency.
>
> "In a proper case instituted by one legally authorized to represent the public, the public exhibition of lewd pictures, immodest statuary, or immoral plays would unquestionably be enjoined, or otherwise suppressed; and for the same reason an obscene book or pamphlet is prohibited transit through the United States mail . . . ."

In *State of Ohio ex rel Keating v. A Motion Picture Film Entitled "Vixen" et al.*, 272 N.E.2d 137 (July 21, 1971), Amicus, as a private citizen, brought an abatement action against the exhibition of the motion picture "Vixen" in Cincinnati, Ohio (Hamilton County) under Section 3767.01 et seq., of the Ohio Revised Code, which authorizes a private party to bring such action. In that trial, the statute was upheld as against a claim of constitutional invalidity and the exhibition of the film at an indoor movie was held to be a public nuisance in Hamilton County. An appeal to the Court of Appeals, First Appellate District of Ohio, a similar attack was made against the statute on constitutional grounds, and as applied to the film itself. On July 20, 1970, the Court of Appeals, First Appellate District of Ohio upheld the constitutionality of the statute the principle involved and after trial *de novo*, declared the exhibition of the

film to be a nuisance in the counties of Ohio in which it had jurisdiction. The Ohio Supreme Court affirmed the lower court's judgment and that matter is presently before this Court. On March 13, 1971, the Clerk of the Court was directed to obtain the film for the Court's viewing.

Section 8767.01 et seq., of the Ohio Revised Code was recently before a 3-judge federal district court, convened under 28 U.S.C. Sections 2281-2284, upon a claim of the unconstitutionality of such statute. In that case, *Grove Press, Inc. et al. v. Anthony B. Flask*, 325 F. Supp. 574 (March 10, 1970), the court, in an unanimous decision (Celebreezze, Battisti and Green), upheld the constitutionality of the statute and its application in an abatement of the motion picture film, "I Am Curious (Yellow)" as a public nuisance. On July 6, 1970, Grove Press, Inc. filed its appeal in the United States Supreme Court. See *Grove Press, Inc. v. Flask*, October Term 1970, No. 360. As of this date, no action has been taken by this Court in this matter.

On the issue of whether indecency in the form of public lewdness in theatrical performances can be stopped in a civil action to abate a public nuisance in California, see *Weis v. Superior Court of San Diego County*, 30 Cal. App. 730, 159 P.464 (June 14, 1916). In *Weis*, that issue was before the District Court of Appeals, 2nd District, on a writ of prohibition. The District Attorney had commenced a civil action under Code of Civil Procedure, Section 731, to abate a theatrical performance on the ground that it was a public nuisance. The complaint alleged that under a concession granted by the Panama-California International Exhibition, the defendant was conducting upon the exposition grounds a public resort and place of amusement and entertainment, known as the "Sultan's Harem," in which certain women did

make in the presence of the general public a public exhibition and exposure of their naked person and private parts, which performance was alleged to be indecent and offensive to the senses and a public nuisance. The California court dismissed the defendant's application for a preemptory writ holding the action was properly brought. At page 465, the court said:

"While the acts here complained of clearly constitute a crime, *they also constitute a nuisance within the meaning of Section 3479 of the Civil Code*, which defines a nuisance as 'anything which is . . . indecent or offensive to the senses . . . so as to interfere with the comfortable enjoyment of life or property . . . .' (Emphasis ours.)

"And Section 3480 of the same Code defines a public nuisance as: 'One which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or danger inflicted upon individuals may be unequal.'

"Mr. Joyce in his work on Nuisances, Section 409, says: 'A disorderly and disreputable theater may be enjoined although a common nuisance.'

"To the same effect is Wood on Nuisances, Section 68, where it is said: 'A public exhibition of any kind that tends to the corruption of morals, to a disturbance of the peace, or of the general good order and welfare of society, is a public nuisance. Under this head are included . . . obscene pictures and any and all exhibitions, the natural tendency of which is to pander to vicious . . . and disorderly members of society.'" . . .

The *Weis* decision and rationale was cited with approval

by the California Supreme Court in *People v. Lim*, 18 Cal.2d 872, 118 P.2d 472 (Nov. 27, 1941). In the *Lim* case, the California Supreme Court noted, at page 476:

> "Similarly in Weis v. Superior, 30 Cal. App. 730, 159 P.464, it was held that the District Attorney of San Diego County was authorized under Code of Civil Procedure, Section 731, to enjoin the performance of a public exhibition which was shown to have been indecent, and thus within the statutory definition of public nuisances in Civil Code Section 3749 . . . . The courts have thus refused to grant injunctions on behalf of the State *except* where the objectionable activity can be brought within the terms of the statutory definition of public nuisance . . . ." (Our emphasis.)

The theatrical performance in *Weis* was in the nature of a "concession" on the Exposition grounds. The latter fact infers that the performance was a commercial activity and was not visible to the public's eye without the payment of an admission price. See the recent decisions of this Court in *U. S. v. Reidel* 402 U.S. 351 (May 3, 1971) *Thirty-Seven (37) Photographs* 402 U.S. 363 (May 3, 1971) which accord no constitutional protection to such commercial activities.

More recently, the California Supreme Court indicated *in dictum* that it presently adheres to the Common Law rule noted above. In *Burton v. Municipal Court of the Los Angeles Judicial District of Los Angeles County*, 68 Cal. 2d 684, 441 P.2d 281, 68 Cal. Rptr. 721 (June 6, 1968), a licensing case involving the exhibition at a theater of films claimed to be obscene, that Court cited with approval the Abatement Statute which codifies the principle employed by the Georgia Supreme Court. While denying the right of an *administrative board* to refuse a license on an *administrative* fact finding

that the theater was a nuisance, the court pointed to the *judicial* Abatement Statute as a proper *procedural* employment of the "nuisance" concept. At page 726, the court said:

"'[15]Section 103.31(b), under which the board may deny a permit *'for a business which has been or is a public nuisance' is likewise defective.* The Civil Code defines a nuisance as 'Anything which is injurious to health, *or is indecent* or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any ** public park, square, street, or highway * * *.' (Civ. Code § 3479) *Section* 3480 defines a public nuisance as 'one which affects at the same time an entire community or neighborhood, or any number of persons * * * *.' *(See also, Pen. Code,* §§ 370, 371.)

"The provisions of Section 103.31(b) are no less vague than those of Sections 103.29(b) and 103.31(c) 1. *To permit a board to refuse to grant a license for the operation of a motion picture theater because in its subjective opinion the operation may be 'indecent or offensive to the senses* * * so as to interfere with the comfortable enjoyment of life or property of 'any considerable number of persons' obviously vests in the board an exorbitant quantum of discretion and *fails to meet the constitutional requirement of narrowly circumscribed standards.*

"'[16] *We note in passing that the law provides ample methods for eliminating the existence of a nuisance by indictment or information, or by the bringing of a civil*

suit or an action for abatement. (Civ. Code § 3491) It is, of course, within the *authority of a municipal legislative body to prescribe what constitutes a nuisance.* (Gov. Code, § 38771; City of Bakersfield v. Miller (1966), 65 Cal. 2d 93, 100, 48 Cal. Rptr. 889, 410 P.2d 393.) However, the policy board is not a legislative agency, and *we are not concerned here with whether particular activity has been properly defined as a nuisance but only with whether an administrative board may refuse to grant a permit to petitioners because in its subjective opinion the business which they operate 'has been or is a public nuisance.'"* (Our emphasis.)

In *People ex rel Hicks v. "Sarong Gals"* 103 Cal. Rptr. 414 (Aug. 3, 1972) the Court of Appeal in California was faced with a case involving subject matter which differed from the type of conduct herein, only, in that there the "lewdness" was "live," rather than "filmed." In upholding the application of the Red Light Abatement Law to abate, as a nuisance, continuing acts of lewdness sans evidence of prostitution, the Court held at page 417:

"The behavior described in the instant case amounts purely and simply to an exhibition calculated to arouse latent sexual desires and release the inhibitions of the viewers rather than a mode of expressing emotion and dramatic feeling by the performer.

"While our Supreme Court has held that amusement and entertainment as well as the expression of ideas are encompassed within the right of freedom of speech (In re Giannini, *supra*, 69 Cal.2d 563, 569, 72 Cal. Rptr. 655, 446 P.2d 535; Weaver v. Jordan, 64 Cal.2d 235, 242, 49 Cal.Rptr. 587, 411, P.2d 289), entertainment value per se does not give an activity redeeming social

importance. Presumably, the Romans of the First Century derived entertainment from witnessing Christians being devoured by lions. Given the right audience, the spectacle of a man committing an act of sodomy on another man would provide entertainment value. However, neither this spectacle nor the activities described in the instant case are invested with constitutionally protected values merely because they entertain viewers. However chaotic the law may be in this field, no court has as yet adopted such an extreme result.

"Public display such as those described above are within the type of public nuisances traditionally within the power of the state to regulate and prohibit. They involve no significant countervailing First Amendment consideration. Attempts to present this type of commercialized lewdness under the mantle of the First Amendment under a concept of communication of ideas stretches reason.

"We hold that the "entertainment" described in the instant case is lewd and, therefore, not afforded the protection of freedom of speech under the First Amendment. The acts of the "entertainers" or "dancers" in the instant case were purely and simply obscene acts performed for the purpose of inciting the sexual desires and imaginations of a group of randy, beer drinking patrons. As such, these acts amount to conduct not protected by the First Amendment. The prevention of these acts does not hinder the market place of ideas or freedom to distribute information and opinion."

In answering arguments that the legislature did not intend the statute to encompass that type of activity, the

court said at page 416:

"Defendants contend that when the Red Light Abatement Law was enacted (1913), the Legislature did not have in mind the type of activity described above.[3]

"This is apparently true. History does not record the existence of any topless-bottom-less bars offering the type of entertainment described herein in 1913. Western folklore has it that prostitutes were good-hearted wenches who bedded their customers with no shilly-shallying around, nursed the sick in times of emergency, eventually married homesteaders and became pillars of the community. However, even prior to 1913, the exploitation of sexual desires for profit was apparently recognized as a social problem. Thus the Legislature specifically included lewdness as one of the grounds of the court's power to curb a public nuisance. In People v. Bayside Land Co., 48 Cal.App. 257, 191 P. 994, the court held that lewdness – even though no incidents of prostitution or assignation had occurred – came within the Red Light Abatement Law."

Carried as a footnote, the Court also made the following observation:

"It can be argued with equal persuasion that the authors of the First Amendment to the United States Constitution would be more than a trifle shocked were they to discover some of the more bizarre behavior now protected by that amendment's lofty concept of freedom of speech."

It should be noted that the legislative "intent," in Georgia follows the broad interpretation given to the term "lewdness" by the California Court in the "Sarong Gals" case, and is in harmony with the decision of the Georgia Supreme

Court below. Section 61-116 of the Georgia Code makes all leases and agreements for the letting of structures for purposes of prostitution to be void, and specifically states that "The term 'prostitution' as used in this law shall be construed to include the offering or giving of the body for sexual intercourse, sexual perversion, obscenity and/or lewdness for hire . . ." (Our emphasis.)

(b) THE RIGHT TO PROSCRIBE OBSCENITY IS A TENTH AMENDMENT RIGHT, GUARANTEED BY THE BILL OF RIGHTS WHICH RESERVES TO THE STATES AND TO THE PEOPLE THE RIGHT TO CONTROL AND REGULATE "PUBLIC MORALITY" *i.e.*, PUBLIC CONDUCT, WHICH AFFECTS THE PEOPLE AS A WHOLE. OBSCENITY CONTROLS DO NOT ATTEMPT TO REACH "PRIVATE MORALITY."

Obscenity controls do not attempt to reach *private morality* such as what a person may read or see. The proscription of obscenity is grounded upon the legitimate governmental aim of controlling and regulating "*public morality*" – public conduct, which affects the people as a whole.

Although it is true that the governmental restraints imposed by such obscenity laws must, of necessity, *indirectly* restrict the availability of such materials for some persons who might wish to see movies, such as are involved herein, that same result is obtained whenever any "vice" laws are enforced, such as those proscribing prostitution. It would be, however, a gross distortion of the law to suggest that this indirect effect on private morals is the *basis* for such criminal sanctions and thus an unconstitutional infringement on the rights of an individual.

Law and morality are not identical. Although interrelated, they are necessarily distinct. Not every moral evil is proscribed by man-made law. *Public* morality is to be distinguished from *private* morality, as to which it is often said, the law does not concern itself. On the other hand, our law has always recognized the importance of maintaining a high *public* morality.

Nowhere was the function of such "vice" laws more clearly stated than in the arguments of the prosecutor two and one-half centuries ago in the first obscenity conviction in *Rex v. Curl*, 2 Strange 789 (1727):

> "3. As to Morality. Destroying that is destroying the peace of the government for government is no more than public order, which is morality. My Lord Chief Justice Hale used to say Christianity is part of the law, and why not morality too? I do not insist that every immoral act is indictable, such as telling a lie, or the like; *but if it is destructive of morality in general, if it does, or may, affect all the King's subjects, it then is an offense of a public nature. And upon this distinction it is that particular acts of fornication are not punishable in the Temporal Courts* (Common Law courts) *and bawdy houses are.* In Sir Charles Sedley's case it was said, that this Court is the custos-morum of the King's subjects. 1 Sid. 168." (Our emphasis.)

Louis B. Schwartz, co-reporter of the Model Penal Code, explains the governmental function of the obscenity crime in society as follows, in 63 Columbia Law Review, Morals Offenses, and the Model Penal Code (cited by this Court with approval in *Ginzburg v. U.S.*, 16 L.Ed.2d 38, fn. 12; page 39, fn. 14, page 41, fn. 19; *Mishkin v.* N.Y., 16 L.Ed. 2d 53, fn. 9; and *Stanley*, 394 U.S. 557, fn. 10) at page 671:

"But the great majority of people believe that the morals of 'bad' people do, at least in the long run, threaten the security of the 'good' people . . . . it is hard to deny people the right to legislate on the basis of their beliefs not demonstrably erroneous, especially if these beliefs are strongly held by a very large majority. The majority cannot be expected to abandon a credo, and its associated sensitivities, however irrational, in deference to a minority's skepticism."

And at page 672:

"If unanimity of strongly held moral view is approached in a community, the rebel puts himself, as it were, outside the society when he arranges himself against those views . . . the community cannot be expected to make (his) first protests respectable or even tolerated by the law . . . ."

Mr. Schwartz continues, at page 681:

"But equally, it is not merely sin-control of the sort that evoked Professor Henkin's constitutional doubts. Instead, the community is merely saying, 'Sin, if you must, in private. Do not flaunt your immoralities where they will grieve and shock others. If we do not impose our morals upon you, neither must you impose yours upon us, undermining the restraint we seek to cultivate through family, church, and school.' *The interest being protected is not* directly or exclusively, the souls of those who might be depraved or corrupted by the obscenity, *but the right of parents to shape the moral notions of their children, and the right of the general public not to be subjected to violent psychological affront.*" (Our emphasis.)

Concerning the power of government to regulate matters relating to *public morals* and power to say what is offensive to *public morality*, this Court said in *Mugler v. Kansas*, 123 U.S. 623 (1887):

> "The power to determine such questions (what is offensive to public morality) so as to bind all, must exist somewhere; else society will be at the mercy of the few, who, regarding their own appetites or passions, may be willing to imperil the peace and security of many, provided only they are permitted to do as they please. *Under our system that power is lodged in the legislative branch of the government.* It belongs to that department to exert what are known as police powers of state, *and to determine primarily, what measures are appropriate or needful for the protection of the public morals*, the public health, or the public safety . . . ." *(Our emphasis.)*

See also, Federal District Judge Peirson Hall speaking on "The Monster Vice" in *U.S. v. Four (4) Books*, 289 F. supp. 972 at 973 (Sept. 10, 1968), cited herein at p.4 footnote 4.

The existence of the vice of obscenity is the symptom of a disorder which probability tells us, will lead to ruin. Historian Arnold Toynbee tells us that 19 out of the 21 great civilizations which flourished in world history, crumbled into ruin . . . not because of armed aggression from without but because of moral decay from within. In 1874 Justice Swayne, speaking for an unanimous United States Supreme Court in *Trist v. Child*, 21 Wallace 441, 450 (1874) had the following to say about the nature of the underpinnings of this Nation:

"The foundation of a republic is the virtue of its citizens. They are at once sovereigns and subjects. As the foundation is undermined, the structure is weakened. When it is destroyed the fabric must fall. Such is the voice of history . . . ."

In sum, the case for the governmental action against obscenity was stated by the Associate Justice Harlan in his concurring opinion in *Roth v. U.S.*, 354 U.S. 476, 77 S. Ct. 1304, 1 L.Ed.2d 1498 (June 22, 1957), at page 502:

"The state can reasonably draw the inference that over a long period of time the indiscriminate dissemination of materials, the essential character of which is to degrade sex, will have an eroding effect on moral standards . . . ."

The long range indirect effects inference, accepted by Mr. Justice Harlan, was acknowledged by a majority of this Court in *Ginsberg v. N.Y.*, 390 U.S. 629, 20 L.Ed.2d 195, 88 S.Ct. 942, where the Court referred to the observations of psychiatrist Dr. Gaylin (with apparent approval) at page 642, fn. 10:

". . . but despite the vigor of the ongoing controversy whether obscene material will perceptively create a danger of anti-social conduct, or will probably induct its recipient in such conduct, a medical practitioner recently suggested that the possibility of harmful effect to youth cannot be dismissed as frivolous. Dr. Gaylin of the Columbia University Psychoanalytic Clinic, reporting on the view of some psychiatrists in 77 Yale Law Review at 592-593, said:

"'It is the period of growth (of youth) when these patterns of behavior are laid down, when environmental stimuli of all sorts must be integrated into a

workable sense of self, when sensuality is being defined and fears elaborated, when pleasure controls it is in this period, undramatically and with time, that legalized pornography may conceivably be damaging.'

"Dr. Gaylin emphasizes that a child might not be as well prepared as an adult to make an intelligent choice as to the material he chooses to read:

"'Psychiatrists . . . made a distinction between the reading of pornography, as unlikely to be per se harmful, *and the permitting of the reading of pornography, which was conceived as potentially destructive.* The child is protected in the reading of pornography by the knowledge that it is pornographic, i.e., disapproved. It is outside of parental standards and not a part of his identification processes. *To openly permit implies parental approval and even suggests seductive encouragement.* If this is so of parental approval, it is equally so of societal approval – another potent influence on the developing ego.'"

It seems obvious to Amicus herein that, in the context employed, those members of this Court who joined in that opinion must have recognized the "indirect" effects on public morals in the nature of a scandal-giving seduction, i.e., "public nuisance."

A nation whose public morals are preoccupied with sex is thought to be sick. The ultimate evil would be a society in which sex pictures, novels and magazines are available at every store, sex pictures on every marquee, sex movies in every theater, sex pictures in every art gallery, and sex language in every dialogue. To the extent that we have

attained that status, we must acknowledge that we have lost control of public order and are closing the gap on the public morality of the ancient community of "Sodom and Gomorrah." The anti-social conduct of today's society becomes the socially acceptable conduct of the new community. Recognizing that the evolution of man in civilized society is a slow-moving process, Amicus respectfully suggest that the individual members of this Court should examine and consider the suggestion that in the biblical days of Sodom and Gomorrah there must have been justices whose liberal views on public morality contributed to the destruction of those two cities. It matters not that in our present morally weakened society, there are many members of our "adult" community who may personally find it difficult to maintain high principles. In a civilized society hypocrisy is the compliment that vice pays to virtue.

During the past two years, the above stated concepts relating to the legitimate interest of government in controlling and regulating "public morality" have been subjected to a constant and determined attack, under a claim that the Federal Constitution required that obscenity should be immune where commercially exhibited to consenting adults in an enclosed theater. This erroneous misconception, arising out of an interpretation placed on the recent decision of the United States Supreme Court in *Stanley v. Georgia*, 394 U.S. 557, 22 L.Ed.2d 542, 89 S.Ct. 1243 (Apr. 7, 1969) was finally laid to rest on May 3, 1971, by this Court's decisions in *U.S. v. Reidel (supra)* and *U.S. v. Thirty-Seven (37) Photographs (supra)*. In *U.S. v. Reidel*, Justice White, speaking for six members of the Court, said at page 815:

"Section 1461 of Title 18, U.S.C., prohibits the knowing use of the mails for the delivery of obscene matter.

The issue presented by the jurisdictional statement in this case is whether §1461 is constitutional as applied to the distribution of obscene materials to willing recipients who state that they are adults. The District Court held that it was not. We disagree and reverse judgment."

and at page 816:

"In *Roth v. United States*, 354 U.S. 476 (1957), Roth was convicted under §1461 for mailing obscene circulars and advertising. The Court affirmed the conviction, holding that 'obscenity is not within the area of constitutionally protected speech or press' id., at 485, and that §1461, 'applied according to the proper standard for judging obscenity, do(es) not offend constitutional safeguards against convictions based upon protected material, or fail to give men in acting adequate notice of what is prohibited.' Id., at 492. Roth has not been overruled. It remains the law in this Court and governs this case. Reidel, like Roth, was charged with using the mails for the distribution of obscene material. His conviction, if it occurs and the materials are found in fact to be obscene, would be no more vulnerable than was Roth's.

"Stanley v. Georgia, 394 U.S. 557 (1969), compels no different result. There, pornographic films were found in Stanley's home and he was convicted under Georgia statutes for possessing obscene material. This Court reversed the conviction, holding that the mere private possession of obscene matter cannot constitutionally be made a crime. But it neither overruled nor disturbed the holding in Roth. Indeed, in the Court's view, the constitutionality of proscribing private pos-

session of obscenity was a matter of first impression in this Court, a question neither involved nor decided in Roth. The Court made its point expressly: 'Roth and the cases following that decision are not impaired by today's holding. As we have said, the states retain broad power to regulate obscenity; that power simply does not extend to mere possession by the individual in the privacy of his own home.' Ibid. Nothing in Stanley questioned the validity of Roth insofar as the distribution of obscene material was concerned. Clearly the Court had no thought of questioning the validity of §1461 as applied to those who, like Reidel, are routinely disseminating obscenity through the mails and who have no claim, and could make none, about unwanted governmental intrusions into the privacy of their home. The Court considered this sufficiently clear to warrant summary affirmance of the judgment of the United States District Court for the Northern District of Georgia rejecting claims that under Stanley v. Georgia, Georgia's obscenity statute could not be applied to book sellers. Gable v. Jenkins, 397 U.S. 592 (1970)."

In *U.S. v. Thirty-Seven (37) Photographs (supra)* the same majority of six came to an identical holding in a case involving the right of the Federal Government to seize obscene materials at the point of entry into this country and to institute a civil action in the federal courts to declare the subject matter to be contraband and subject to forfeiture. Mr. Justice White, writing for four members of the Court, held as follows, at page 833:

"We next consider Luros' second claim, which is based upon Stanley v. Georgia, supra. On the authority of Stanley, Luros urged the trial court to construe the

First Amendment as forbidding any restraints on obscenity except where necessary to protect children or where it intruded itself upon the sensitivity or privacy of an unwilling adult. Without rejecting this position, the trial court read Stanley as protecting, at the very least, the right to read obscene material in the privacy of one's own home and to receive it for that purpose. It therefore held that § 1305(a), which bars the importation of obscenity for private use as well as for commercial distribution, is overbroad and hence unconstitutional.

"The trial court erred in reading Stanley as immunizing from seizure obscene materials possessed at a port of entry for the purpose of importation for private use. In United States v. Reidel, ante, we have today held that Congress may constitutionally prevent the mails from being used for distributing pornography. In this case, neither Luros nor his putative buyers have rights which are infringed by the exclusion of obscenity from incoming foreign commerce. By the same token, obscene materials may be removed from the channels of commerce when discovered in the luggage of a returning foreign traveler even though intended solely for his private use. That the private user under Stanley may not be prosecuted for possession of obscenity in his home does not mean that he is entitled to import it from abroad free from the power of Congress to exclude noxious articles from commerce. Stanley's emphasis was on the freedom of thought and mind in the privacy of the home. But a port of entry is not a traveler's home. His right to be let aloneneither prevents the search of his luggage nor the seizure of

unprotected, but illegal, materials when his possession of them is discovered during such a search. Customs officers characteristically inspect luggage and their power to do so is not questioned in this case; it is an old practice and is intimately associated with excluding illegal articles from the country . . . ."

To use the language of this Court in *U.S. v. Thirty-seven (37) Photographs*, the judicial power to abate "obscenity" as a public nuisance is an "old practice" which is "intimately associated with excluding" morally corruptive articles from the communities.

Amicus emphasizes the relevance and importance of *U.S. v. Reidel* and *U. S. v. Thirty-seven (37) Photographs*, to the issues raised on this appeal and the major problem confronting this Nation insofar as the runaway nature of "public lewdness" on the public screen and elsewhere is concerned. (See pp 11-63 and Appendices "B", "C", "D" and "E".) It is now quite clear from these decisions that (1) actual prior restraints by way of court order, for a reasonable period of time in advance of a final determination of the legal issue by the trial court and after decision by the trial court are constitutional, and (2) no property interest attaches to obscene materials which are possessed for commercial use and (3) the obscene materials can properly be made the subject of forfeiture as contraband.

In Amicus' view, it is inconceivable that all of the issues herein are not already decided by this Court's opinions in *Reidel* (supra) and Thirty-seven (37) Photographs (supra).

(c) THERE IS A JUSTIFIABLE GOVERNMENTAL GROUND FOR THE REGULATION OF OBSCENITY BY STATES IN WHATEVER FORM IT MIGHT TAKE.

The power of the State in the area of public morals is broad. In *Kingsley Books, Inc. v. Brown*, 354 U.S. 436, 1 L.Ed2d 1169, 77 S.Ct. 1325 (June 24, 1957) decided on the same date as *Roth-Alberts*, 354 U.S. 476, Justice Frankfurter had the following to say concerning the power of states in this area, at Page 440:

"In an unbroken series of cases extending over a long stretch of this Court's history, it has been accepted as a postulate that 'the primary requirements of decency may be enforced against obscene publications.' Id. 238 US at 716. And so our starting point is that New York can constitutionally convict appellants of keeping for sale the booklets incontestably found to be obscene. Alberts v. California, decided this day (1 L.ed2d 1948). The immediate problem then is whether New York can adopt as an auxiliary means of dealing with such obscene merchandising the procedure of Section 22-a.

"We need not linger over the suggestion that something can be drawn out of the Due Process Clause of the Fourteenth Amendment that restricts New York to the criminal process in seeking to protect its people against the dissemination of pornography. It is not for this Court thus to limit the State in resorting to various weapons in the armory of the law. Whether proscribed conduct is to be visited by a criminal prosecution or by a qui tam action or by an injunction or by some or all of these remedies in combination, is a

matter within the legislature's range of choice. See *Tigner v. Texas*, 310 US 141, 148, 84 L.ed1124, 1128, 60 S. Ct. 879, 130 ALR 1321. If New York chooses to subject persons who disseminate obscene 'literature' to criminal prosecution and also to deal with such books as deodands of old, or both, with due regard, of course, to appropriate opportunities for the trial of the underlying issue, it is not for us to gainsay its selection of remedies. Just as *Near v. Minnesota*, 283 US 697, 75 L.ed1357, 51 S.Ct. 625, supra, one of the landmark opinions in shaping the constitutional protection of freedom of speech and of the press, left no doubts that 'Liberty of speech, and of the press, is also not an absolute right,' 283 US at 708, it likewise made clear that the protection even as to previous restraint is not absolutely unlimited.' Id, 283 US at 716. To be sure the limitation is the exception; it is to be closely confined so as to preclude what may fairly be deemed licensing or censorship."

5. THE MOTION PICTURE FILMS "MAGIC MIRROR" AND "IT ALL COMES OUT IN THE END" ARE OBSCENE AS A MATTER OF LAW AND A PUBLIC NUISANCE PER SE.

An examination and analysis of the Time-Motion Studies for "Magic Mirror" and "It All Comes Out In The End," appearing herein at pages 11-41 and 43-63 demonstrates beyond all doubt that the Georgia Supreme Court's ruling was plainly correct. "Reasonable men could not differ and could come to but one conclusion" – the test for material which is obscene as a matter of law. See Point IA3, supra, at pages 100-106 and the cases cited therein.

Acts and conduct which result in injury to the people are

a public nuisance. Such injury is manifest from the incessant display of lewdness on the public screen. See the time-motion studies for both films, and note, in particular, the narrative legend for each segment of the film appearing at the bottom of each page.

The visual depiction in public of the above sexual acts, if performed off-stage in 3-dimensional form would be the subject for a criminal complaint. When performed in 2-dimensional form, either realistically or simulated, the same are incontrovertibly contrary to the good morals, common custom, public policy, and common conscience of the community of the Nation as a whole.

By way of illustration, Appellants submit that if Sodomy or sexual perversion is a violation of the law prohibiting "lewdness," then the public display of such acts, real or simulated, by way of motion pictures is also contrary to the public policy and in violation of the obscenity laws as a *matter of law*. It is no answer to suggest that if this were so, then the motion picture presentation of simulated murder would be illegal. That, of course, would be a *non sequitur*, for there is no law which prohibits the pictorial portrayal of simulated murder, whereas there is an almost universally recognized law which prohibits the pictorial portrayal of indecent public conduct and that is the law against "lewdness" in public displays.

CONCLUSION

For all of the foregoing reasons, the judgment of the

Georgia Supreme Court below, should be affirmed.

Respectfully submitted

Charles H. Keating, Jr.
Amicus Curiae

Richard M. Bertsch
James J. Clancy
Ray T. Dreher
Albert S. Johnston III
440 Leader Bldg.
Cleveland, Ohio 44114
of Counsel

APPENDIX A

Decided: Nov. 5, 1971

In the Supreme Court of Georgia

26631 SLATON, District Attorney, Et Al v.
PARIS ADULT THEATRE I, Et Al

1. Where, in a proceeding by the district attorney to have certain motion picture films declared to be obscene and subject to be seized and seeking temporarily and permanently to enjoin the showing of the same, the matter came on for a hearing pursuant to an ex-parte order requiring the defendants to show cause on a day certain 10 days from the issuance of such order why the relief prayed for should not be granted and why a temporary injunction should not issue, it was error for the trial judge on such hearing to finally adjudicate the merits of the case and to dismiss the plaintiff's complaint.
2. The evidence was sufficient to authorize a jury to find that the films involved in this case are obscene. Upon such a finding, their exhibition in a commercial theater to willing adult audiences may be properly enjoined since it is not protected by the first amendment.
3. The denial of a temporary injunction in this case exposed the plaintiff to the hazard that the question sought to be adjudicated might become moot, and under the the principle of the balancing of conveniences, it was error to deny a temporary injunction restraining the exhibition of the films.

HAWES, Justice. The appeal in this case is from the judgment and order of the Superior Court of Fulton County

refusing a temporary injunction against the showing by the defendants, Paris Adult Theatre I and Paris Adult Theatre II, of two allegedly obscene motion pictures. Following the procedure approved by this court in Evans Theater Corp. v. Slaton, 227 Ga. 377 (180 SE2d 712), and followed in Walter, et al. v. Slaton, 227 Ga. 676 (182 SE2d 464), and in 1024 Peachtree Corp., et al., v. Slaton (No. 26612; decided . Lewis R. Slaton, as District Attorney of the Atlanta Judicial Circuit, and Hinson McAuliffe, as Solicitor General of the Criminal Court of Fulton County, filed a complaint against the theaters and named individuals praying for a rule nisi to require the defendants to show cause on a date certain why the motion picture films, "It All Comes Out In The End," and "Magic Mirror," should not be declared obscene and subject to be seized, and seeking in each case an order requiring the defendants to produce the aforesaid motion picture films and that they be temporarily and permanently enjoined from exhibiting the same. The rule nisi was duly issued and served in each case, and an adversary hearing was held pursuant thereto on January 13, 1971 before a Judge of the Superior Court of Fulton County. After viewing the motion pictures and hearing the evidence, the trial judge rendered the following judgment: "'The State contends that the motion picture under review in the above actions are obscene. The titles of the films are, "It All Comes Out In The End," and "Magic Mirror." Assuming that obscenity is established by a finding that the actors cavorted about in the nude indiscriminately, then these films may fairly be considered obscene. Both films are clearly designed to entertain the spectator and perhaps, depending on the viewer, to appeal to his or her prurient interest. The portrayal of the sex act is undertaken; but the act itself is consistently only

a simulated one if, indeed, the viewer can assume an act of intercourse or of fellatio is occurring from the machinations which are portrayed on the screen. Each of the films is childish, unimaginative, and altogether boring in its sameness.

"It appears to the Court that the display of these films in a commercial theater, when surrounded by requisite notice to the public of their nature and by reasonable protection against the exposure of these films to minors, is constitutionally permissible.

"IT IS THE JUDGMENT OF THIS COURT THAT the films, even though they display the human body and the human personality in a most degrading fashion, are not obscene.

"The actions against the Defendants, therefore, are dismissed.

"This 12th day of April, 1971.

Jack Etheridge, Judge, Superior Court of Fulton County, Atlanta Judicial Circuit."

The appeal is from this order. The grounds of enumerated error are that the court erred in declaring each of the films to be not obscene, in refusing to enjoin the defendant from exhibiting each of said motion pictures, and in dismissing the appellant's complaint against the defendants.

1. As was pointed out in Walter v. Slaton, supra, the initial hearing in this kind of proceeding presents for the judge's decision only the question of whether there is probable cause to hold the material in question to be obscene, and, therefore, whether the exhibition of a motion picture or

the distribution of literature shall be temporarily enjoined until the ultimate question of osbcenity can be passed upon by a jury. *Therefore, "on the hearing of an application for an interlocutory injunction, the presiding judge should not undertake to finally adjudicate issues of fact,* but should pass on such questions only so far as to determine whether the evidence authorizes the grant or refusal of the interlocutory relief." Florida Central R. Co. v. Cherokee Sawmill Co., 137 Ga. 815 (6) (74 SE 523); Kight v. Gilliard, 214 Ga. 445 (2)(105 SE2d 333); Smith v. Davis, 222 Ga. 839, 841 (152 SE2d 870); Oliver v. Forshee, 224 Ga. 200, 202 (160 SE2d 828). In the instant case, a question of fact was presented as to whether applying contemporary community standards the dominant theme of the films in question, taken as a whole, is to the prurient interest, and whether they are entirely without redeeming social value. The films themselves were in evidence. They spoke for themselves, and we have reviewed them in the discharge of our function as a court of review, along with the transcript of the oral testimony of the so-called expert witness who testified on the trial on behalf of the defendants as to the redeeming social value of the films, when considered in connection with the films themselves made an issue of fact as to whether the films are obscene, *this was a question which, under our procedure, necessarily had to be submitted to the jury upon the final determination of the case,* and under the cases last cited it was clearly error for the trial judge to pass an order dismissing the complaint. It cannot be said under the state of the record before this court that a finding in favor of the complainants could not under any conceivably provable circumstances be authorized.

2. Appellees contend, and the judge of the superior court

found that, inasmuch as the evidence in this case shows that the films which the solicitor seeks to seize are shown in a theater which carries on the front thereof the warning that it is for adults only and that "You must be 21 and able to prove it. If viewing the nude body offends you – PLEASE DO NOT ENTER," the exhibition of the films in this context is permissible and that the State cannot, without violating first amendment rights, constitutionally prohibit it. They rely in support of this position upon the case of Stanley v. Ga., 394 U.S. 557, and other Federal and State cases following it. That case, however, is not authority for the position which appellees take. It dealt, not with the commercial distribution of pornography, but with the right of Stanley to possess, in the privacy of his home, pornographic films. In one of the most recent, if not *the* most recent, case decided by the Supreme Court of the United States dealing with this kind of material that court has expressly limited the scope of Stanley and has thereby effectively answered this contention of the appellees. U.S. v. Reidel, U.S. , 28 L.Ed 2d 813, 91 S. Ct. . That case involved the distribution through the mails of an admittedly obscene publication in violation of 18 U.S.C. § 1461. The material was mailed to recipients who responded to a newspaper advertisement which required the recipient to state in his order therefor that he was 21 years of age. Reidel was indicted but the trial court granted his motion to dismiss the indictment, and upon review, the Supreme Court, in reversing that judgment, reiterated the ruling in Roth v. U.S., 354 U.S. 476, 1 L.Ed 2d 1498, 77 S. Ct. 1304, that "obscenity is not within the area of constitutionally protected speech or press." In so ruling, the Supreme Court expressly held that the government could constitutionally prohibit the distribution

of obscene materials through the mails, even though the distribution be limited to willing recipients who state that they are adults, and, further, that the constitutional right of a person to possess obscene material in the privacy of his own home, as expressed in Stanley, does not carry with it the right to sell and deliver such material. As we view the holding in the Reidel case, it is dispositive of the appellees' contention, and the ruling of the trial court that the showing of these films in a commercial theater under the circumstances shown in this case is constitutionally permissible. The defendants in this case were making sales and delivery of the films involved in the only practical way in which it could be done, that is, by selling to the public the right to come into their theater and view the showing of such films, No reason exists why the sale and delivery of these films should be immune to State control any more than the sale and delivery of multiple copies of an obscene book, pamphlet or magazine. Those who choose to pass through the front door of the defendant's theater and purchase a ticket to view the films and who certify thereby that they are more than 21 years of age are willing recipients of the material in the same legal sense as were those in the Reidel case, who, after reading the newspaper advertisements of the material, mailed an order to the defendant accepting his solicitation to sell them the obscene booklet involved there. That case clearly establishes once and for all that the sale and delivery of obscene material to willing adults is not protected under the first amendment.

Appellee also contends, and the trial judge so found, that the sexual activity depicted in these films is merely simulated, and that, being such, it is not obscene. This contention we unhesitatingly and utterly reject. True, the

activity in the films here involved is not revealed in the explicit detail embodied in the films in the Walter case. But, we held in the Evans Theater case that, "I Am Curious Yellow," depicted hard core pornography. In that case, only simulated sexual activity was involved. The films in this case leave little to the imagination. It is plain what they purport to depict, that is, conduct of the most salacious character. We held that these films may be found to be obscene, and upon such a finding the showing of such films should be enjoined since their exhibition is not protected by the first amendment.

3. Generally, in the granting or denying of a temporary injunction, a wide discretion is vested in the judge of the superior court, and unless some substantial equity has been violated, this court will not control his exercise of that discretion in passing such interlocutory order unless it is shown to have been clearly abused. Jones v. Johnson, 60 Ga. 260 (3); Green v. Fuller, 223 Ga. 204 (1) (154 SE2d 220); Mar-Pak Michigan, Inc. v. Pointer, 225 Ga. 307, 309 (168 SE2d 141); J. D. Jewell, Inc. v. Hancock, 226 Ga. 480, 488 (9) (175 SE2d 847). However, where it is clear from the order appealed from that the trial judge did not deny the temporary injunction in the exercise of his discretion, but that his denial was based upon an erroneous interpretation of the law, the foregoing rule does not apply. Ballard v. Waites, 194 Ga. 427, 429 (2) (21 SE2d 848), and cits. Accordingly, under such circumstances, in reviewing the denial of a temporary injunction, this court should consider whether upon the application of the principle of the balancing of conveniences the denial of a temporary injunction would leave the plaintiff practically remedyless in the event he should thereafter establish his right to a permanent injunc-

tion. Everett v. Tabor, 119 Ga. 128 (4), 130 (46 SE 72); Maddox v. Willis, 205 Ga. 596 (5) (54 SE2d 632); Stephens v. State Highway Department, 223 Ga. 713, 714 (1) (157 SE2d 751). Applying the foregoing propositions to the facts of this case, it is apparent that a temporary injunction was necessary in order to protect the jurisdiction of the court and to prevent the case from becoming moot. It follows that the trial judge erred in denying the temporary injunction.

Judgment reversed. All the Justices concur.

Appendix B.

State Statutory Standards

Dealing With

Offenses Against Morality and Decency.

ARRANGED BY STATE AND TOPIC

OBSCENITY	LEWDNESS	INDECENCY (Indec. Ex.	NUDITY	MORAL NUISANCE	OBSCENE LANGUAGE	ADULTERY	FORNICATION	SODOMY	INCEST	PROSTITUTION
					ALABAMA					
Title 14 Chapter 64 14-372 et seq. Scienter, Presump. 14-374 (5)	7-1006	Exposure: 14-324 (1) Enticing child for immoral purpose 14-338 (2)	Nude Pictures 14-374	Equity Action 14-374 (3) Obscenity: Injunc. 14-374 (7) Nuisance: "lewdness, assignation or prostitution" 7-1091	Before Women 14-11	14-16	14-16	14-106	14-323 et seq.	14-391 et seq. Nuisance 7-1091
Obscene defined: "...Lewd, lascivious, filthy and pornographic and that to the average person, applying contemporary community standards, its dominant theme taken as a whole appeals to prurient interest." 14-374 (3)										
					ALASKA					
Comic Books 11.40.170	Wanton children 11.15.134	Exposure: 11.40.080 Contrib. to delinq. of child 11.40.130 Selling: "immoral... obscene,... vulgar,... indecent..." 11.40.150 Indecent comic book 11.40.170			Telephone: 11.43.035	11.40.080 et seq.	11.40.040	11.40.130	11.40.110	11.40.110 11.40.130 et seq. 11.40.30
Defns. "Sexually indecent...adultery, bestiality, sodomy, masochism, perversions, lewd, lascivious, suggestive, obscene embrace, scantily clad breasts or genitals exposed" 11.40.170 (4)										
					ARIZONA					
13-531 et seq. Minors 13-536 Hous Subsid 13-601.01 Obscene defined: "that which considered as a whole has as its dominant theme or purpose an appeal to prurient interest or a shameful or morbid interest in nudity, sex or lewdness going substantially beyond customary limits of candor in description or representation of such matters and is utterly without redeeming social importance." 13-531.01	13-651 et seq. 13-652 13-901 et seq.	(see obscenity)	Motion picture depicting nudity (minors) 13-536	Nuisance: "indecent or offensive to senses" 13-601 Obscenity: Injunction 13-535	Language 13-377 Obscene song: 13-378 Telephone 13-893	13-221 et seq. Incestuous Adultery 13-471	Open and notorious 13-222	13-651 13-652	13-471 13-101	13-531 et seq Nuisance 13-107 13-601 et seq.
					ARKANSAS					
41-2723 et seq. 41-2701 et seq. Defns "obscene, vulgar, indecent" 41-2704 "matter of grave concern to the people" 41-2714 Scienter presump.: 41-2727 Sale to minors 41-2732	(see obscenity)	Exposure: 41-2701 Indecency: 41-2703 Before children 41-1127	Nudism: 47-2709 et seq. "public exhibition of nudity" 41-2701 "private parts exposed in presence of others" 41-2709	Injunc. 41-2713 41-2718 Action in Chancery Court: 41-2717 Nuisance, sodist comp 34-101 et seq.	41-1411	Divorce grounds 34-1202	Charge of, is slander 41-2487	41-813 41-814	41-811 53-103 et seq.	41-1111 et seq. Nuisance 41-2207
Obscene defined: "To the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest." 41-2715 (d)										

	LEWDNESS	INDECENCY (Indec. Ex.)	NUDITY	MORAL NUISANCE	OBSCENE LANGUAGE	ADULTERY	FORNICATION	SODOMY	INCEST	PROSTITUTION
					CALIFORNIA					
	PC 314, 650 1/2 PC 11225, et seq. Registration of offenders PC 290	Obscene live conduct PC 311.6 Acts outraging decency PC 650 1/2 Indecent Exposure PC 314 Indec. Exhibit., children participating Lab 1308	Topless waitresses and entertainers Penal Code See obscen. defin. PC 311 (a)	Nuisance: "lewdness, assignation or prostitution..." PC 11225 Nuisance: "indecent or offensive to the senses." CC 3479 Public nuisance: "indecent" CCP 731	Vulger, profane or indecent PC 415 comp 311.6	PC 269a 269b	Cohabitation PC 269a 269b	PC 286 288 A	PC 285	Penal Code 647 Nuisance PC 11225

...as a whole, the predominate appeal of which to the average person applying contemporary standards, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion; and is matter which taken as a whole goes substantially beyond customary limits of ...in description or representation of such matters; and is matter which taken as a whole is utterly without redeeming social importance. PC 311 (a)

					COLORADO					
	40-9-35 (see indecent exp)	Indecent liberties 40-2-32 Lewd display or notorious act of public indecency 40-9-15		Nuisance: "lewdness, assignation or prostitution" 39-15-2 Injunction: 40-9-22 40-7-105		40-9-1 et seq. 40-6-501	40-9-3 40-9-15	Loss of civil rights 39-10-10	40-9-4 et seq. Disqual. for civil rights 39-10-10	40-9-11

...lewd, or indecent, or lascivious...or other representation... of an immoral or indecent nature...pictures of men or women in ...indecent attitudes or positions...indecent or immoral details of crime, vice, or immorality, to corrupt public morals, or to offend common ...decency...or to make ...immorality and licentiousness attractive..." 40-9-17

					CONNECTICUT					
	53-305 et seq.	53a-82 et seq.	Nudity defined: 53a-193 (2) See obscen. defin. 53a-193	Nuisance: "lewdness, assignation, or prostitution" 19-336 Obscenity: Injunction 53a-190 53a-200	(repealed)	53a-81	(repealed)	Penal Code 76 et seq.	53a-191	Penal Code 83 et seq.

...(1 considered as a whole, its predominant appeal is to prurient, shameful or morbid interest in nudity, sex, excretion, sadism or masoch..., (2) it goes substantially beyond customary limits of candor in describing or representing such matters, and (3) it is utterly without ...redeeming social value." 53a-193

					DELAWARE					
	Defined 11-731		Nudity defined: 11-438a (a)	"social vices" Nuisance: 10-7101 et seq. Nuisance: "lewdness, assignation, or prostitution" 19-7107 Obscenity: Restraining order in Chancery 11-438 a		11-575 11-591 11-821 Curtesy of Hus. barred by, 25-744	11-591 11-821 822		11-591 24-1788	11-731 et seq. 11-703

...server, lewd, lascivious, filthy, indecent...or instrument of indecent or immoral use or purpose..." 11-711

OBSCENITY	LEWDNESS	INDECENCY (Indec. Ex.)	NUDITY	MORAL NUISANCE	OBSCENE LANGUAGE	ADULTERY	FORNICATION	SODOMY	INCEST	PROSTITUTION
DISTRICT OF COLUMBIA										
22-2001 et seq. 47-2303 Obscene defined:	22-2713 Lewd, indecent or obscene acts 22-111.2 Nuisance 22-2713	22-1112	(not researched)	Nuisance "lewdness, assignation, or prostitution" 22-2713		22-301			22-1901	22-2701 et seq. Nuisance 22-2713
FLORIDA										
847.011 et seq. Nuisance: 823.05 Minors: 847.012 Scienter Presumption 847.011 (1) (b)	Defined: 796.07 847.011 Children and minors 847.012 .013 License revocation, barbers 476.14	Exposure: 800.02 .03	Nudity defined: 847.011 (b)	Obscenity: Injunction: 847.011 (1) (a) Nuisance: "injurious to the morals, prostitution, assignation, lewdness, games of chance... 823.05 Obscenity: Injunction: 847.011 (1) (a) Presumption of legislature 847.011	847.05 Publ using: 232.26 Open profanity 847.04 Indecent language 365.16	798.01 798.04	798.03 .04 Female children and idiots 794.05 .06	800.01 .02	741.32	796.07 et seq. 323.16 Nuisance 64.1 et seq. Corporation, bus. pass 931.19 509.16
Obscene defined: "...obscene, lewd, lascivious, filthy, indecent, sadistic, or masochistic..." 847.011 (1) (b)										
GEORGIA										
26-2101 et seq. Minors 26-9901a Pandering as separate test: 26-2101 (c)	26-2011 ?	Public indecency 26-2011 Indec. Ex. children disposed of for 54-9903 9904 Disbarment of attorney for 9-501 Enticing child for indec. purposes 26-2020	Nudity or sexual conduct, material depicting 26-2102 See obscene definition 26-2101 (b)	Nuisance: "...tends greatly to corrupt the manners and ... morals of... the people" 72-301 Crime is indictable as a nuisance 72-9901	26-2410 May justify assault 26-1306	26-2009	26-2010	26-5901 et seq.	26-2006	26-2001 et seq. 27-2004 80-05 53-9901 Lewd house 72-209 Nuisance 72-201 Prostitution includes giving of body for gain/reward 26-6705
Obscene defined: "...if considered as a whole, applying community standards, its predominant appeal is to prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion, and utterly without redeeming social value and if, in addition, it goes substantially beyond customary limits of candor in describing or representing such matters." 26-2101 (b)										
HAWAII										
727-8 et seq. Public shows 445-115 Obscene nuisance 727-8 Obscene defined: "...obscene, lewd, lascivious, filthy, indecent, or disgusting, or the chief features of which consist of pictures or stories of lust and crime or which manifestly tends to the corruption of the morals of youth, or of morals generally..." 727-8	769-52 727-1 et seq. Lascivious conduct 769-51	(see obscenity)		Nuisance: "obscene publications "...obscene, lewd, lascivious, filthy, indecent, or disgusting... w...tends to the corruption of the morals..." 727-8	759-1 -2	768-11 et seq.	768-15 et seq.	768-61 et seq.	768-41	727-1 et seq. Nuisance 727-11

OBSCENITY	LEWDNESS	INDECENCY (Indec. Ex.)	NUDITY	MORAL NUISANCE	OBSCENE LANGUAGE	ADULTERY	FORNICATION	SODOMY	INCEST	PROSTITUTION
					IDAHO					
Minors 18-1514 et seq. State pre-emption 18-1515 Enforcement 18-1513 Each materials contributing to crime and injury child & dissemination 18-1514	Open lewdness 18-2101	18-4101 "Indecent Nuisance" 52-111	Nudity defined: 18-1101 (2) Nudity (minors) 18-1506 (1) (a) "Nudity" See obscen. definition 18-2105 (5)	Moral Nuisance "injurious to morals... indecent..." 52-101 "injurious to public morals..." 52-103 Obscenity enjoined 18-1513 et seq. Injunction obscenity 18-1511 Nuisance: "Prostitution, lewdness, assignation or other indecent acts, or house of ill fame" 52-104		18-6601 31-883 33-604	Lewd cohabitation 18-6604	18-6603 6606	18-6602 32-205	18-2101 Nuisance 52-104
Lewd to mean defined: "(1) The quality of any material or of any performance or of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it: (i) predominantly appeals to the prurient, shameful or morbid interest of minors, and (ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (iii) is utterly without redeeming social importance for minors. (b) The quality of any material or of any description or representation, in whatever form, which, as a whole, has the dominant effect of substantially arousing sexual desires in persons under the age of eighteen (18) years." 18-2105 (5)									
					ILLINOIS					
38-8-10 Minors 38-8-11 et seq. Minors 38-15-2263 et seq. Penalties enf. of const. 38-8-10 (a)	9-2701 et seq.	Lewd exposure: "Public indecency...includes...(1) sexual intercourse... (2) deviate sexual intercourse... (3) lewd exposure of the body...(4) lewd fondling of the body..." 38-11-9 Indec. liberties w/child 38-11-4 et seq.	Nudity (minors) 38-11-21 (b) (1) "Nudity" See obscen. defin. 38-11-20 (b)	Nuisance: "Lewdness, assignation, or prostitution" 100 1/2-1	telephone 134-15.4 15.5 Passengers 114-87.49	38-11-7	38-11-8	38-11-3	38-11-11 38-11-10	38-11-14 et seq. Nuisance 38-37-1 100 1/2-1
Obscene defined: "...considered as a whole, its predominate appeal is to prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters..." 38-11-20 (b)										
					INDIANA					
9-3501 et seq. Minors 9-87 et seq. Dealing in, sale of, etc. obscene lit. 9-1409 Other local, penals 9-13-02	Lewd matter 10-2303 Nuisance: 9-2701 Immoral places 10-4110	Exposure: 10-2901 Letting stallions in public 10-2302	Nudity defined: 10-917 (b) Nudity (minors) 10-919	Nuisance: "lewdness, assignation or prostitution" 9-2701 et seq.	In presence of female: 10-2901 telephone 10-4544	10-4207	10-4207 4208	10-4221	10-4236	10-4239 et seq. Nuisance 9-2701
Obscene defined: "...obscene, lewd, indecent, or lascivious..., instrument or article of indecent or immoral use...." 10-2301										

OBSCENITY	LEWDNESS	INDECENCY (Indec. Ex.)	NUDITY	MORAL NUISANCE	OBSCENE LANGUAGE	ADULTERY	FORNICATION	SODOMY	INCEST	PROSTITUTION
					IOWA					
725.3 et seq. Minors 725.8	725.1 et seq. Lewd act in presence of child; corrupting morals of children: 725.3, .3	Exposure 725.1		Nuisance: "...indecent..." 657.1	Profane and indecent 725.1	701.1	vicious... cohabitation 725.1	705.1, .2	704.1	724.1 et seq.
Obscene defined: "...obscene, indecent, immoral, or impure...which would tend to the corruption of the morals of youth or others..." 725.3 (Song, play, exhibition, show or entertainment). "...obscene, lewd, indecent, lascivious, or filthy...or article of indecent or immoral use..." 725.5 (book, pamphlet, picture, writing or instrument).										
					KANSAS					
21-4301 Minors 21-4301 a	Lewd and lascivious behavior: "sexual intercourse... being viewed ...or the exposure of a sex organ..." 21-3508	Exposure: 21-3508	See obscene definition 21-4301 (1) (a)	"Endangers ...public health" 21-4113	In (limited 21-112 (reenacted 1970) telephone 21-4113	21-3107	21-909 21-191 (repealed)	21-3505 aggravated sodomy 21-3506	21- 3602	21-301 et seq.
Obscene defined: "...considered as a whole, its predominant appeal is to prurient, shameful or morbid interest in nudity, sex, excretion, sadism or masochism, and the material is patently offensive and utterly without redeeming social value..." 21-4301 (1) (a)										
					KENTUCKY					
436.090 et seq. Minors 436.101 (3) et seq. and 435.540 et seq. Publishing, featuring crime 436.110 See offenses against morality" Illicit sex in comic books 436.540 et seq.	436.075 Exhibiting stallion, jack or bull 436.170	Exposure lacking garb 436.160 Indecent practices 435.105 (reenacted 1970)	"Nudity" See obscenity definition 436.101 (c)	Exposition, obscene matter 436.570	96.170 Telephone 436.387 swearing profane cursing 431.000 436.150 train 277.260 437.090	436.070	436.070	Sodomy buggery 436.060	436.060	436.071 Nuisance 230.101
Obscene defined: "...to the average person, applying contemporary standards, the predominant appeal of the matter taken as a whole, is to prurient interest, a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters." 436.101 (c)										
					LOUISIANA Civil (Roman) law State					
14.106 Minors 14:91.11 14:92.2 Pre-emption of regulation 14:92.2	Disorderly conduct 14:103 Exhib. of minors 23:251	Contrib. to delinquency "place where sexually indecent and obscene material...is offered,...exhibited" 14:92 Indecent behavior 14:81 Public morals 14:281 et seq.	Nudity defined: 14:92.2 A (1)	Obscenity, Nuisance "assignation, prostitution or obscenity" 13:4713	14:92 telephone 14:285 45:1160 Language or gestures 14:103		(indexed under other topics)	14:89	14:78	14:82 et seq.
Obscene defined: "(1) Exposure of one's person to a public place...that sex organ may be seen...by another.... with the intent of arousing sexual desire. (2) Production (of matter)...with the intent to primarily appeal to the prurient interest...of any lewd, lascivious, filthy or sexually indecent (matter)...(4)...any lewd, lascivious, sexually indecent dancing, lewd, lascivious or sexually indecent posing, lewd, lascivious or sexually indecent body movement..." 14:106 A										

	LEWDNESS	INDECENCY (Indec. Ex.)	NUDITY	MORAL NUISANCE	OBSCENE LANGUAGE	ADULTERY	FORNICATION	SODOMY	INCEST	PROSTITUTION
					MAINE					
	17-3461	17-901	Nudity defined: 9-460	Nuisance: "Places reported to for lewdness" 17-2741	Indecent language profanity and offensive language 17-452	17-301	17-1513	17-3001	17-1581	17-3051
	Obscene defined: "...illustrations of ...sadism, masochism, sexual perversion, bestiality or lust, or obscenity, indecency ...." 17-2501									
					MARYLAND					
	Defined 27-15	Indecent exposure 27-122	Nudity proscribed and defined 27-416 A-G Nudity and sexual displays 27-416A	Injunction obscenity; circuit cts. and equity cts. 27-415 A	Profanely cursing in streets 27-121 Blasphemy 27-12 telephone 27-555A	for divorce 16-34	Abduction for fornica. 27-1	27-553 554 555 561	27-335 555 561	27-1 et seq. 27-135 429 429 431 575
	"...obscene..." 27-415 (held to give adequate warning of the conduct proscribed and to mark boundaries sufficiently distinct for judges and juries fairly to administer the law. Levin v. State, 1 Md. App. 139, 230 A. 2d 687 (1967).)									
					MASSACHUSETTS					
	Immoral Entertainments "lewd, obscene, indecent, immoral or impure show ...or tending to corrupt morals of youth..." 272-32 31 Unnatural and lascivious act 272-35 Lewd and lascivious persons 272-53	Indecent Exposure 272-53 Devices for indecent purposes 272-28 (par. 3)	Nudity: See obscenity definition 272-28	Obscenity, petition in equity 272-28C Nuisance "prostitution, assignation or lewdness" 139-4	Profane obscene impure language 272-31 Blasphemy 272-36 Obscene language at sporting event 272-36A Arrest for using 272-59 telephone 269-14A	272-14 et seq.	272-18 et seq.	272-34 Unnatural and lascivious acts 272-35 35A 277-45	272-17	272-53 et seq. Nuisance 139-4
	"...obscene, indecent or impure..." 272-28A									
	"...obscene, indecent or impure, harmful to minors, or manifestly tends to corrupt the morals of youth..." "...harmful to minors" (means) ...representation of nudity, sexual conduct or sexual excitement which appeals predominately to the prurient, shameful or morbid interest of minors under eighteen years of age, is patently contrary to prevailing standards of adults in the community as to what suitable material for such minors, and is utterly without redeeming social importance for such minors." 272-28									
					MICHIGAN					
	Gross loudness and lascivious behavior 28.567 Homosexuality 28.570	Exposure 28.567 (1) City power 5.1740 Gross indecency 28.570 (1) Exhibition of children 28.335	Nudist camps, taxation 7.555 (3a)	Village powers 5.1285 5.1332 Nuisances: 28.569	Indecent language in presence of women and children	28.210 215	Lewd and lascivious cohabitation 28.567	28.355 356	28.565	28.131 .345 (3) .489 .703 .717 .1285 .1865 Nuisance 27A.3801
				"Lewdness, assignation, prostitution, gambling, prostitutes, disorderly persons, (illegal) narcotic drugs, (illegal) liquors..." 27A.3801 Obscenity Injunction: "...obscene, lewd, lascivious, filthy, indecent, or disgusting, or...instrument of indecent or unusual use..." 27A.2938					
	Obscene defined: 1. "...obscene, lewd, lascivious, filthy or indecent, sadistic or masochistic..."; 2. Test to be applied: "...the effect of the (material)...considered as a whole...upon the average person in the community....judged...by the standards of common conscience of the community of the contemporary period of the violation charged;" 3. "...portrayal...of illicit sex, or sexual relations, of perversion, lust or sexual passion..." 1.28.575 (1): 2. 28.575 (2): 3. 28.575 (3)									

MINNESOTA

OBSCENITY	LEWDNESS	INDECENCY (Indec. Ex.)	NUDITY	MORAL NUISANCE	OBSCENE LANGUAGE	ADULTERY	FORNICATION	ROBBERY	INCEST	PROSTITUTION
617.241 et seq. Minors 617.293 Village power to restrain 412.221	Lewd exposure and lascivious behavior 617.23	Lewd exposure 617.23 Indecent articles 617.25 .251	Nudity defined 617.292 (1) Nudity (minors) 617.293 (a)	Obscenity; Village power to restrain and punish 412.221 Obscenity Public Nuisance 609.74	Language provocative of assault 625.15 telephone 494.75	617.15 (repealed)	617.16 (repealed)	609.293 Bestiality 609.294	617.13	617.20 et seq. repealed

Obscenity is harmful to minors; appeal need to protect commercial exploits. 617.291 (Subdiv.1)

Motion picture rating system, void. 617.297

Obscene defined: "Whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interests." 617.241

MISSISSIPPI

11-2674-01 et seq. Maximum promptness and dispatch 11-2674-08 Enjoined 11-2674-10 equity rules in procedure 11-2674-08 Injunction prerequisites 2674-11	Nudities or lack in public view 11-2382	"private parts" exposure 11-2390 Obscene indecent immoral exhibitions 11-2386		Nuisance "loudness, assignation or prostitution" 11-2000 Obscenity enjoined 11-2674-10 Obscenity action in Chancery ct. 11-2674-01 rules of civil procedure pertaining to equity cases are applicable 11-2674-08	"Profanely curse or curse...use vulgar and indecent language..." 11-3291 telephone 11-2381.5	11-1998 et seq.	11-1998 et seq.	(not re-enacted)	11-417 434	11-231 et seq. Minors 11-233

Obscene defined: "...to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest." 2674-01

MISSOURI

563.270 et seq. Search and seizure 542.300 et seq. 563.280 Minors 563.310 Enjoined 563.295	563.430 563.150	Exposure to minors 563.309 Exposure 563.150		Obscenity enjoined 563.285	Vulgar obscene or indecent pleadings in newspaper 563.290	563.150		563.230	Felony 563.220	563.030 et seq. Minimum "penalty intact" 563.035

Obscene defined: 1. "...devoted mainly to...scandals, wearings, lechery, assignations, intrigues between men and women and immoral conduct of persons..." 563.270; 2. "...obscene, lewd, licentious, indecent or lascivious...or other publication of indecent, immoral or scandalous character...or publish in any newspaper any vulgar, scandalous, obscene or immoral pleadings or evidence..." 563.280

MONTANA

94-3601 et seq. seizure authorized 94-3604 94-3618	lewdness 94-1002	indecent exposure; 94-3603 "private parts"		Nuisance; "indecent or offensive to senses" 57-101 93-4302	sing lewd or obscene song or words 94-3803 (1)	94-4107	94-4107	94-409 94-4110	48-105 94-701	94-107 et seq. Minors 94-107

94-1001 et seq. 57-110 57-103

Nuisances: "lewdness, assignation, prostitution, gambling, (illegal) gaming rooms, (illegal) cockfights), or other illegal acts prohibited by title 94 chapters 24 and 30."94-

Obscene defined: "...to the average person, applying contemporary standards, the predominant appeal of the matter, taken as a whole, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters." 94-3601

	LEWDNESS	INDECENCY Indec. Ex.	NUDITY	MORAL NUISANCE	OBSCENE LANGUAGE	ADULTERY	FORNICATION	SODOMY	INCEST	PROSTITUTION
					INDIANA					
23-911 et seq.	28-290	Indecent exposure 28-290		Obscenity injunction 28-920.01 28-926.02 | Nuisance defined 28-1016 | Offensive matter nuisance 28-1014 | Nuisances "Lewdness, assignation, or prostitution" 28-910	In presence of female 28-920 | defined 28-926 | child see 43-504	28-902	Seduction and fornication 28-927 928	28-909	28-904 et seq.	28-931 et seq. Injunction 28-911
...decent, lewd, indecent, or lascivious..." 28-921										
					NEVADA					
201.250 et seq.	Open and gross lewdness 201.230 | Registration of sex offenders 207.151 et seq.	Indecent exposure 201.220 | Exhibition of "obscene indecent or immoral" show 201.253 Employment for indecent exhib. 900.210	Nudist colonies 444.070 | Nudity defined 201.261 | Nudity (minors) 201.265 (1) | Nudity: see obscenity definition 201.250 (1) (b)	Public nuisance 202.450 .460 | City power 266.350 | Obscenity injunction 201.250 (4) (b)	Obscene calls, telephone 201.255	Grounds for divorce 125.010	(see sodomy) intercourse)	201.190	201.180	Advertising prostitution forbidden 201.430 et seq. | Pandering 201.300
...that which considered as a whole has as its dominant theme or purpose an appeal to prurient interest or a shameful or morbid interest in nudity, sex or lewdness going substantially beyond customary limits of candor in description or representation of such matters."										
					NEW HAMPSHIRE					
571:1 et seq.	579:3 et seq.	Indecent exposure 570:6 | Indecent conduct 570:22 et seq.		Nuisances: "lewdness, assignation, or prostitution" 544:1 | Immoral purposes chap. 544 | Offensive businesses 147:15	Lascivious speech 570:25 | 570:2 :3 | Offense against morality 570:2 | telephone 572:38-b 571:14	579:1 :2	579:4	579:9	579:7 | 457:1 et seq.	579:14 et seq. | Nuisance 544:1 | 570:19
...decent or lewd or lascivious..." 571:14										

OBSCENITY	LEWDNESS	INDECENCY (Indec. Ex.)	NUDITY	MORAL NUISANCE	OBSCENE LANGUAGE	ADULTERY	FORNICATION	SODOMY	INCEST	PROSTITUTION
					NEW JERSEY					
2A:115-1 et seq. Pandering 2A:115-1.2 To minors 2A:115-1.3 115-3.2	Open lewdness or notorious act.. Inducing to debauch morals 2A:115-1	Exposure 2A:115-1 Indecencies in publication 2A:115-2		Nuisance: "gather...for purpose of gratifying themselves" 2A:130-2 120 N.J.L. 361 Municipal power 40:72-2 Obscenity injunction 2A:115-3.5 Nuisances: "prostitution, lewdness, or assignation" misdemeanors 2A:133-2	2A:140-2 Indecent communications to female 2A:115-4	2A:94-7 2A:89-1	2A:139-1	2A:143-1 -2	2A:114-1 et seq.	2A:115-(et seq.

Obscenity:

1. Legislative findings: "The Legislature finds that the standards of obscenity now enunciated in chapter 115 of Title 2A of the New Jersey Statutes as amended and supplemented in recent years is unnecessarily permissive and a hindrance to effective legal action against those matter. The Legislature further finds that such unnecessary permissiveness has resulted from the incorporation into New Jersey Statutes language from influential opinions authored by certain United States Supreme Court justices; which language, however, does not represent binding majority decisions of the Supreme Court and, accordingly, need not bind the Legislature or the judiciary of this State." 2A:115-(.1)

2. Obscene defined: "...that which to the average person, applying contemporary community standards, when considered as a whole, has as its dominant theme or purpose an appeal to prurient interest." 2A:115-1.1

					NEW MEXICO					
Power of municipalities to suppress 14-21-12 14-17-14	Exposure 40A-9-8			Nuisance: "injurious to public...morals..." 40A-8-1		40A-10-2	40A-9-8	40A-10-3	40A-9-(et seq.
					NEW YORK					
Penal Code 235.00 et seq. Scienter presumptions PC 235.10 PC 235.22 to minors PC 235.30 PC 235. 21 Motion Picture Films Educ. 122-a Seizure and forfeiture Penal 410.00	Indecent exhibitions Educ 5215-c At fairs or expositions Agric. and M 368 revocation of licenses for, vehicle and T 394 Indecency injunction Crim 23-a	Nudity defined PC 235.30 (2)	Obscenity injunction CPLR 6330 Obscenity town's power to prohibit Town 130 (11) Nuisance: "lewdness, assignation, or prostitution" Pub H 2330	Obscene gestures or lang. Penal Code 240.20 Abusive or obscene language in public Penal 240.25	Penal Code 255.17		Penal Code 130.00	Penal Code 255.25	Penal C 230.0 et seq. appro. as nuis Pub H et seq. loss of licens license (2) for Appeals 34.11

Obscenity

1. Constitution. (liberty of conscience not to excuse acts of licentiousness.) Const art 1, Sec. 3

2. Obscene defined: "...(a) considered as a whole, has predominant appeal to prurient, shameful or morbid interest in nudity, sex, or excretion, sadism or masochism, and (b) it goes substantially beyond customary limits of candor in describing or representing such matters and (c) it is utterly without redeeming social value." Penal Code 235.00

					NORTH CAROLINA					
14-190.1 et seq. to minors 14-190.7 190.8 Adversary proceedings 14-190.2 & injunction	Lewd women within three miles of colleges 14-190	Indecent exposure 14-190.9 Indecent exposure, immoral shows 14-190	(see Insane)	Nuisances: "lewdness, assignation prostitution, gambling, or illegal sale of) whiskey or narcotic drugs" 19-1 et seq.	Profane or indecent language 14 -195 telephone 14-196 profane or obscene language on highways 14-197 Obscenity injunction 14-190.2	14-184	14-184	14-177	14-178 179	14-(et seq. Infants 14-(Nuisa 19-1

Obscene defined: "...(1) The dominant theme of the material taken as a whole appeals to the prurient interest in sex; and, (2) the material is patently offensive because it affronts contemporary national community standards relating to the description or representation of sexual matters; and, (3) the material is utterly without redeeming social value; and, (4) the material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina." 14-190.1 (b)

OBSCENITY	LEWDNESS	INDECENCY (Indec. Ex.)	NUDITY	MORAL NUISANCE	OBSCENE LANGUAGE	ADULTERY	FORNICATION	SODOMY	INCEST	PROSTITUTION
					NORTH DAKOTA					
[illegible]-11-07 [illegible] sec. [illegible]unic. [illegible]ower to [illegible]ublic [illegible]-45-01	lewdness unlawful 12-23-10(7) "Lewdness shall include any indecent or obscene act" 12-23-15 (3) Lewdness nuisance 12-23-14	Indecent exposure 12-21-10 Carnivals, indecent shows 53-03-03 Producing indecent material 12-21-10 House for indecent purposes 12-32-20 "Act which openly outrages public decency and is injurious to public morals" misdemeanor 12-22-01		Nuisances: "...offends decency..." 12-01-01 et seq. common nuisance: "for any other lewd, obscene, or indecent purposes..." 12-23-20,30 nuisances: "Prostitution lewdness, or assignation" 12-23-14	Obscene language 12-21-03 et seq. Blasphemy 12-21-01	12-23-00 et seq.	12-23-00 Unlawful cohabitation 12-23-12	12-23-07	12-32-06	12-23-14 et seq. Nuisance: disorderly house 12-32-27
[illegible] [illegible]ffend: "...obscene, lewd, salacious, or lascivious...or other matter of indecent character..." 12-21-07										
					OHIO					
[illegible].34 [illegible] sec. [illegible]arch [illegible]ervice [illegible].35 [illegible]ublic [illegible]ecreation [illegible].30 [illegible]ecord [illegible].33 [illegible] sec.	Exhibiting lewd pictures in saloon 2905.41	Indecent exposure 2905.30 Giving immoral exhibition 2905.40	Nudity defined 2905.34 Nudism prohibited 2905.31	Nuisances: "lewdness, assignation, or prostitution...lewd, indecent, lascivious or obscene films..." 3767.01 et seq. Obscenity enjoined 2905.37	715.55 2923.16 Munic. pwr. to forbid 715.55 profane, immoral, or indecent language 2905.40 obscene or licentious language before female or child 2905.30.1 blasphemy 4931.31	2905.06 Dower barred for, 2103.05	2905.06 Indictment RC 2941.07	2905.44 2951.04 Giving immoral exhibitions [illegible]d, 2905.40	2905.07	2905.32 et seq.

[illegible]: 1. "...obscene, lewd, or lascivious...(material)..or article of an indecent or immoral nature...or show to a minor...useless of [illegible]ent deeds, lost, or crime..." 2905.34

"...considered as a whole and judged with reference to ordinary adults, any of the following apply: (1) Its dominant appeal is to prurient [illegible]erest; (2) Its dominant tendency is to arouse lust by displaying or depicting nudity, sexual excitement, or sexual conduct in a way which [illegible]es to represent human beings as mere objects of sexual appetite; (3) Its dominant tendency is to arouse lust by displaying or depicting [illegible]ality or extreme or bizarre violence, cruelty, or brutality; (4) It contains a series of displays or descriptions of nudity, sexual excitement, [illegible]al conduct, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect [illegible]which is a dominant tendency to appeal to prurient interest, when the appeal to such interest is primarily for its own sake or for commercial [illegible]ntage, rather than for a genuine scientific, educational, sociological, moral, or artistic purpose." 2905.34 A

OBSCENITY	LEWDNESS	INDECENCY (Indec.Ex.)	NUDITY	MORAL NUISANCE	OBSCENE LANGUAGE	ADULTERY	FORNICATION	SODOMY	INCEST	PROSTITUTION
					OKLAHOMA					
21-1021 et seq. 21-1040.8 et seq. seizure 21-1033 certif. trial ad-1024 Oklahoma literature commission 21-1040.3 display of sexual interc. course on outdoor screen prohibited 21-1040.52	Lewd defined: "licentious, lecherous, dissolute, unbecoming, impure, salacious or pornographic" 21-1040.12	Indecent exhibition or exposure "private parts" "such as is offensive to decency... or to excite ...lewd thoughts." 21-1021 (second)		Nuisance: "...offends decency..." 50-1 Injunction 21-1397 Obscenity injunction 21-1032	21-901 et seq. Recording obscene or indecent language, songs, etc. 21-1021 (4) Telephone 21-1172	21-871 et seq. Depiction of adultery forbidden 21-1040.51 Incestuous adultery 21-886	Showing sexual intercourse on outdoor screen (indecen.) 21-1040.52	21-886 -887 Showing unnatural copulation on outdoor screen 21-1040.52	21-886 43-3 21-887	21-889 et seq.

Obscene defined: 12...obscene filthy, indecent, lascivious, lewd or unfit..." 21-1040.9; 3. "...to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest." 21-1040.12 (other words defined: filthy, indecent, lascivious, and lewd 21-1040.12); 2. "(b) 'obscene literature'...any literature offensive to the chastity or modesty, expressing or presenting to the mind or view something that purity and decency forbids to be exposed, or...counts books which... are not uplifting and beneficial to the education, welfare, and character building of the children of Oklahoma." 21-1040.1 (b)

					OREGON					
Obscene matter crime 167.151	Lewdness nuisance 469.110	Indecent exposure 167.345		Nuisance: "lewdness, assignation, or prostitution, or any other business not..." 469.110	166.060 school pupils 339.250	167.060 .050	167.030 .053 .050	167.040	167.035 .050	167.02 .03 .05 .02 .15 et seq. Nuisance 450.02

Obscene defined: "...if, considered as a whole, its predominant theme appeals to prurient interest, and if it is patently offensive and goes substantially beyond the customary limits of candor in describing or representing such matter with reference to ordinary persons." 167.151 (3)

					PENNSYLVANIA					
18-4524 Complaint 18-753 Obscene comic books 18-3831 Injunction 18-3930.1 Censorship (line 6-43 Obscene defined: "...that which, to the average person applying contemporary community standards, has as its dominant theme, taken as a whole, an appeal to prurient interest." 18-4524	Nuisance 50-467 et seq.	Public indecency not 18-4518	Nudity defined 18-4524	Nuisance: "fornication, lewdness, and/or prostitution..." 50-457 Public Nuis.: "detrimental to public health." 53-37330 Obscenity injunction 53-3823.1	18-492	18-4503	18-4506 Rides, used for, nuisance 50-457 et seq.	18-4501	18-4507 minor 18-5110	18-4504 et seq. 53-80 Nuisance 50-457 53-37811 340

OBSCENITY	LEWDNESS	INDECENCY (Indec. Ex.)	NUDITY	MORAL PUTRIANCE	OBSCENE LANGUAGE	ADULTERY	FORNICATION	SODOMY	INCEST	PROSTITUTION
				RHODE ISLAND						
11-1 et seq. 11-1.1 et seq. statute 11-31-10 11-31-14	Lewdness nuisance 10-1-1 11-10-1 "lewd" see obscenity definition 11-31-10	Promotion of obscene shows 11-31-14 "indecent" see obscenity definition 11-31-10	Nude figures (minors) 11-31-14 11-31-10	Nuisances: "lewdness, assignation, or prostitution" 11-30-1 10-1-1 et seq. Advertising along highway 24-10-12 Obscenity injunction 11-31-13	32-2-12 13 11-11-3	11-6-2	11-24-5 Incestuous fornication 11-6-6	11-10-1	11-6-4 15-1-1 et seq.	11-43-1 11-34-1 et seq. Pandering 11-34-5 Nuisance 11-30-1

Obscene defined: 1. "...obscene..." 11-31-1; 2. to minors: "...devoted to, or is principally made up of descriptions of illicit sex or sexual immorality or which is obscene, lewd, lascivious, or indecent, or which consists of pictures of nude or partially denuded figures posed or presented in a manner to provoke or arouse lust or passion or to exploit sex, lust or perversion...or instrument of indecent or immoral use..."

				SOUTH CAROLINA						
16-414 et seq. statute of limitations 16-421 Venue 16-414.7 et seq.	Nuisance 16-1001 et seq. Receive for purpose of lewdness 16-600 (7)	Indecent exposure 16-415 Exhibiting indecent pictures 16-415		Nuisances: "lewdness, assignation, or prostitution" 16-1001 Nuisance "dangerous to human health" Vol. 17 p.320 Obscenity injunction 16-416	Obscene message to women 16-553 telephone 16-553.1	16-406 et seq. grounds for divorce 20-101	16-406 16-409 Disqualifies voter 23-62 91	16-417	16-403	16-409 et seq. Nuisance 16-1001

Obscene defined: "...obscene, indecent or improper print (etc.)...manifestly tending to the corruption of the morals of youth..." 16-414

				SOUTH DAKOTA						
13-24-1 et seq. 13-24-14 et seq. statute of limitations 23-24-21		Indecent exposure felony 22-24-1 et seq. 22-24-2.1 Outraging public decency and "injurious to public morals": 22-24-6 Procuring indecent exposure 22-24-2		Municipal power to remove 9-29-13 Zoning 11-4-7	Obscene language 22-13-7 Obscene or lascivious language in presence of women or children (also telephone) 22-24-6 Singing, speaking obscene song, word, etc. 22-24-16	22-23-17 19 Grounds for divorce 25-4-2		13-1716	22-23-19 22-23-20 25-1-8 13-1715	13-1717 et seq. Nuisance 21-10-19

Obscene defined: "(1)...that which, by contemporary standards as hereinafter set forth, considered as a whole, has as its dominant theme or purpose an appeal to prurient interest. (2) Prurient interest is defined as a shameful or morbid interest in nudity, sex or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters and which as a matter of state public policy is utterly without redeeming social importance." 22-24-11

UTAH

OBSCENITY	LEWDNESS	INDECENCY (Indec. Ex.)	NUDITY	MORAL NUISANCE	OBSCENE LANGUAGE	ADULTERY	FORNICATION	SODOMY	INCEST	PROSTITUTION
76-10-1 et seq. to minors 76-10-1212 et seq. Injunction 76-10-1230 Obscene defined: "...obscene language or obscene prints... manifestly tending to corrupt the morals..." 76-10-1201		Municipal power to prohibit indecent exhibitions 5-201	Nudist colony forbidden 76-10-1230 Nudity defined 76-10-1212	Nuisance: violates he laws of decency" 76-10-1201 (see 1953 Comp. 103-36-2) Obscenity injunction 76-10-1230	76-10-1306 Obscene language 76-10-1201 Telephone 76-10-1231	76-7-101	76-7-101	76-7-102	76-7-103 76-7-104	76-10-1301 et seq.

TEXAS

Title 20 Penal Code PC 527 et seq. Adversary Hearing PC 527 (II)(c) Municipal regulation allowed PC 527 (II) Obscenity injunction PC 527 (13) Comic books PC 529	Lewd women in theater PC 516 Lewdness defined PC 607	Indecent exhibition PC 526 Indecent exposure: PC 535 G Exposure to infant PC 474 535c Indecent exhibitions, films PC 612 Exposure public grounds PC 867	Nudity: see definition of "prurient interest" PC 527 (I)(b)	Common nuisances "drinking, gambling, prostitution" 4664 Obscenity injunction PC 527 (13)	Obscene language PC 474 3154 d-2 Telephone PC 476	PC 489 500 501	PC 503 504	PC 534	PC 493 et seq.	Penal Code 530 et seq. 907 909 957 1175 et seq. 5221 a Nuisance 4664

Obscene defined: "(a)...material (a) the dominant theme of which, taken as a whole, appeals to a prurient interest; (b) which is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters and (c) which is utterly without redeeming social val ue." "(b) 'Prurient interest' means a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters." Title 20, Penal Code, Supp 527 (I) (Used in

UTAH

76-10-5 et seq. seizure 76-10-7 Injunction 76-10-10 Obscenity to minors 76-10-5 (3) Hard-core pornography to minors 76-10-5 (3) Constructive knowledge 76-10-5 Local regulation authorized 76-10-16	Open and gross lewdness; cohabiting in lewd or lascivious or obscene manner 76-10-1(3)	Indecent exposure (misdem.) 76-10-5 76-10-13	Nudity: see definition of obscenity: 76-10-11	Nuisance: "...indecent or offensive to senses..." 76-10-1 Public nuisance: "...(3) Offends public decency..." 76-62-3 City power to declare and abate nuisance 10-8-60 Obscenity injunction 76-10-10 Nuisance: "lewdness, assignation, or prostitution" 47-1-1	Songs, ballads, or other lewd or obscene words in public place 76-10-5(3) 76-10-13	76-53-3	76-53-5 (misdem.)	76-53-23	76-53-4	76-53-11 et seq. 76-53-12 76-53-6 77-53-11 76-61-1 City power to suppress 10-8-41 Nuisance 47-1-1

Obscene defined: "...whether to the average person, applying contemporary community standards, the dominant theme of the material or the conduct taken as a whole appeals to the prurient interest...Prurient interest shall mean a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters and is matter which is utterly without redeeming social importance." 76-10-11

OBSCENITY	LEWDNESS	INDECENCY (Indec. Ex.)	NUDITY	MORAL NUISANCE	OBSCENE LANGUAGE	ADULTERY	FORNICATION	SODOMY	INCEST	PROSTITUTION
					VERMONT					
13-2801 et seq. to minors 13-2804 et seq. Obscene motion pictures 13-2802	open and gross lewdness 13-2601	Exhibiting obscene, lewd or indecent picture...or presents indecent or immoral show 13-2901		Power of Municipalities 24-2121		13-201 202 209		Fellation 13-2603 2601		13-2631 13-2632 House of ill fame 13-2604
Obscene defined: "...lewd or indecent...or which tends to the corruption of the morals of youth..." 13-2801										
					VIRGINIA					
18.1-227 et seq. May be enjoined 18.1-235.3		Indecent exposure 18.1-214 18.1-236 to Child 18.1-214	Nudity: see obscenity definition 18.1-227 Sexual Displays 27-416 A-C	Obscenity injunction 18.1-236.3 Municipal Power 15.6	Swearing 18.1-237 et seq. Telephone 18.1-238	18.1-187	18.1-188 Cohabitation, 18.1-192	?	18.1-191	18.1-194 et seq.
Obscene defined: "...that which considered as a whole has as its dominant theme or purpose an appeal to prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion, and if it goes substantially beyond customary limits of candor in description or representation of such matters." 18.1-227										
					WASHINGTON					
9.68.010 et seq. "Erotic material" defined 9.68.050 Finding "adults only" label 9.68.060 (3 (a) Comic books 7.42.010 et seq.	Lewdness 9.79.120 Sale of lewd publication 9.40.37.130 Nuisance: 7.48.050 injunction 7.42.010	Indecent exposure 9.79.090 9.79.130 Indecent articles 9.68.030		Nuisance: "offend public decency" 9.66.010 Nuisances: "lewdness, assignation, or prostitution" 7.48.050 Obscenity injunction 7.42.010 et seq.	Indecent or vulgar language 9.68.040 in public conveyances 9.27.030 telephone 9.61.230	9.79.110 120	False charge of 4.24.120	9.79.100	9.79.090	9.79.10 Nuisance 7.48.050
Obscene defined: 1. "Erotic Material"; "...material... the dominant theme of which taken as a whole appeals to the prurient interest of minors in sex; which is patently offensive because it affronts contemporary community standards relating to the description or representation of sexual matters or sado-masochistic abuse; and is utterly without redeeming social value;..." 9.68.050 (2): 2. "Prohibited publications": "...detailed account of ...rape, carnal knowledge, seduction, adultery, sodomy or other sexual crime...or (3) Any detailed statement of any evidence of indecent, obscene or immoral acts offered in any trial...or, any...account of the actions of any public prostitute (except concerning public welfare)..." 9.68.020										
					WEST VIRGINIA					
61-8-11 Tending to corrupt youth 61-8-3 Pornographic publications 61-8-15 61-8-4 Obscene defined: "...obscene language...or description manifestly tending to corrupt the morals of youth...or public morals..." 61-8-11	Lewd and lascivious cohabitation 61-8-4 open and gross lewdness Nuisance: Lewdness 61-8-1	Indecent exposure 61-8-28 Immoral shows prohibited -fairs- 19-7-8		Equitable remedies in aid of chastity, morality and decency: Article 9 61-8-1 et seq. Nuisance: "lewdness, assignation, or prostitution"61-8-1	Profanity, obscene, indecent or vulgar language (& telephone) 61-8-15 Profane swearing 8-10-15	61-8-3	61-8-3- Lewd and lascivious cohabitation 61-8-4-	Crimes against nature 61-8-13	61-8-12	61-8-5 et seq. Nuisance 61-8-1

OBSCENITY	LEWDNESS	INDECENCY (Indec. Ex.)	NUDITY	MORAL NUISANCE	OBSCENE LANGUAGE	ADULTERY	FORNICATION	SODOMY	INCEST	PROSTITUTION
					WISCONSIN					
944.21 .22 .23	Lewd and lascivious behavior: "sexual gratification in presence of others; or publicly exposes sex organs; or openly cohabits with one not his spouse" 944.20 Nuisance lewdness 200.03	Misdemeanor obscene or indecent drawings 944.23 Indecent exposure 944.20 et seq. Indecent articles 450.11	Nudity defined: 944.21 (1) (b) Nudity (minors) 944.25 (1) (j) (i)	Nuisance: "...any source of filth or cause of sickness..." 146.14 Nuisances: "lewdness, assignation, or prostitution," 200.03	Telegraph or telephone 196.425	944.15	944.15	944.17	944.06	944.30 et seq. Nuisance 200.03
Obscene defined: "...lewd, obscene or indecent..." 944.21										
					WYOMING					
6-103 104	Defined: 6-90 Nuisance 7-453	Indecent exposure 6-103 Indecent matter in pleading R.C.P., Rule 11 (a) Offenses as to schools 21-36		Nuisances: "lewdness, assignation, prostitution, or gambling ..." 7-453 454 Prosecution of minors 14-12 Public nuisance defined "house of ill fame, prostitution, gambling, (illegal) liquor..." 6-107	Uttering obscene or licentious language in public 6-102	6-86	6-86	6-98	6-95	6-97 et seq. Nuisance 7-453 6-107
Obscene defined: "...obscene, lewd, indecent, or lascivious (matter)...or article of indecent or immoral use..." 6-103										

APPENDIX C

TIME-MOTION STUDY OF MOTION PICTURE FILM

DEEP THROAT pp. C-2 thru C-29

Exhibited at

The New Plaza

N.Y. Av. & 14th St., N.W.

Washington, D.C.

Sept/Oct. 1972

"DEEP THROAT"

(Part 1 of 14 Parts)

"DEEP THROAT"

(Part 2 of 14 Parts)

"DEEP THROAT"

(Part 3 of 14 Parts)

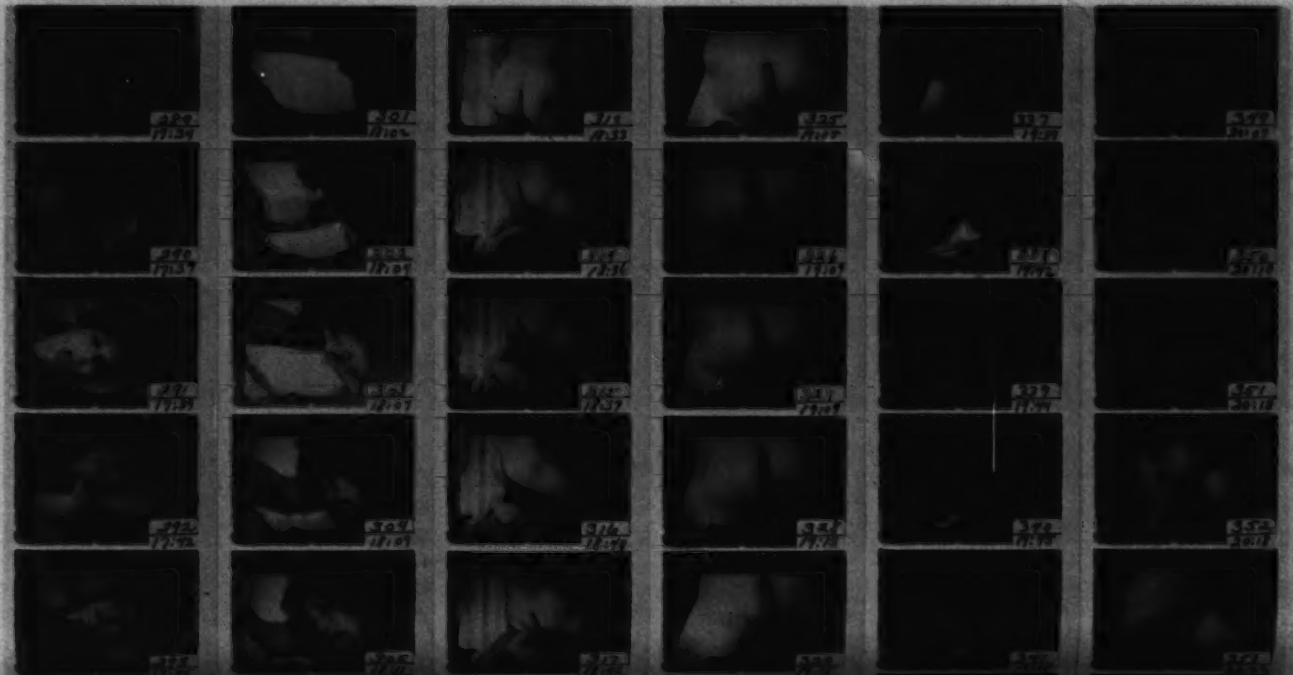
"DEEP THROAT"

(Part 4 of 14 Parts)

C-8

"DEEP THROAT"

(Part 5 of 14 Parts)

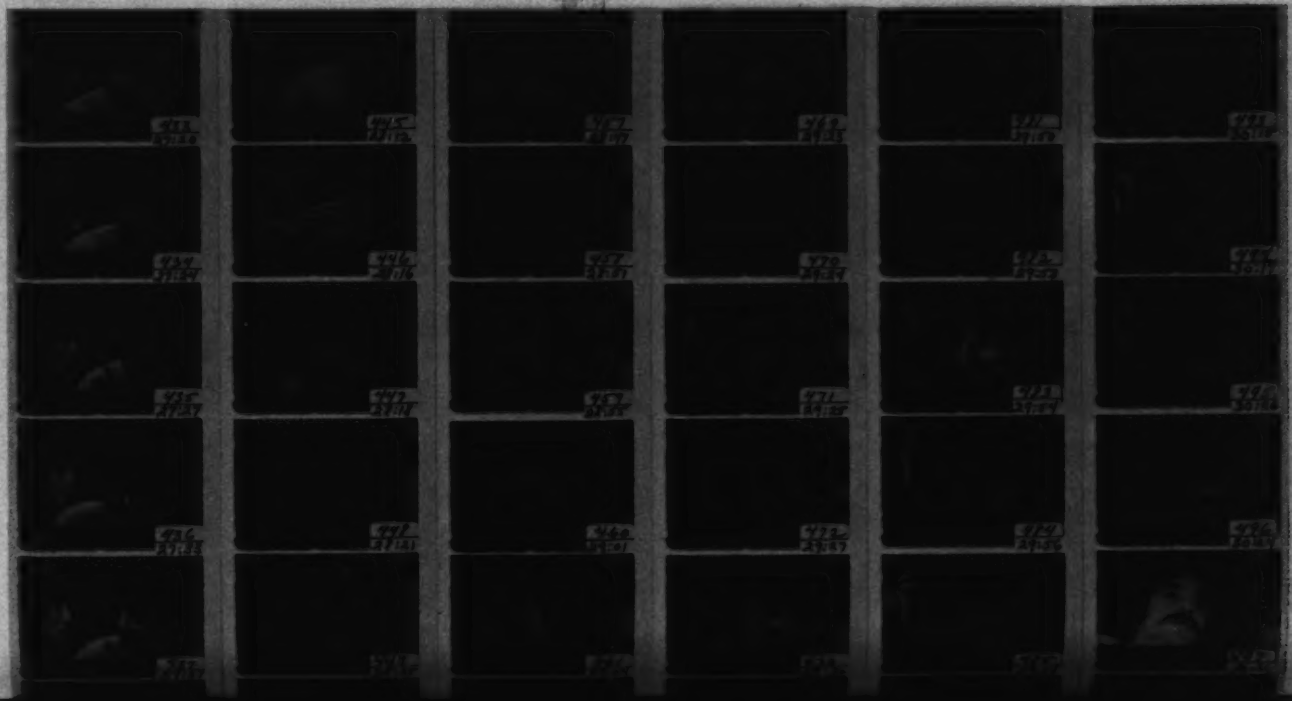


"DEEP THROAT"

(Part 6 of 14 Parts)

"DEEP THROAT"

(Part 7 of 14 Parts)



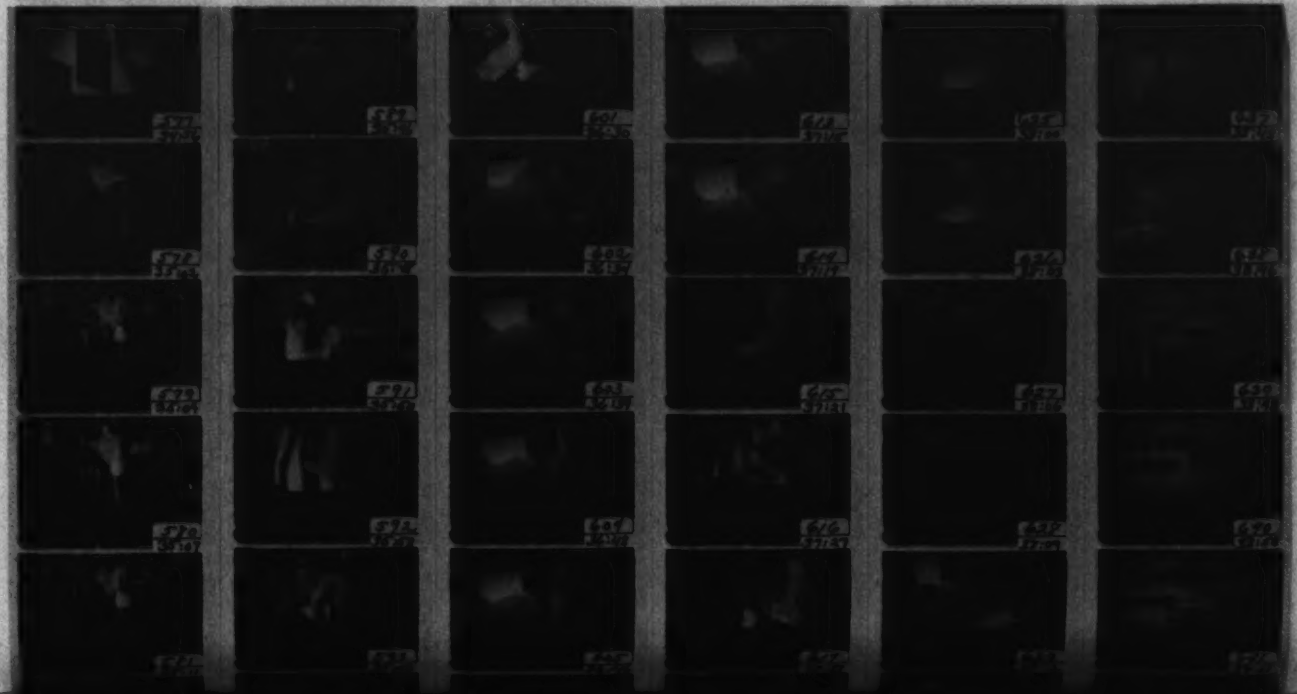
C-15

"DEEP THROAT"

(Part 8 of 14 Parts)

"DEEP THROAT"

(Part 9 of 14 Parts)



"DEEP THROAT"

(Part 10 of 14 Parts)

C-21

"DEEP THROAT"

(Part 11 of 14 Parts)

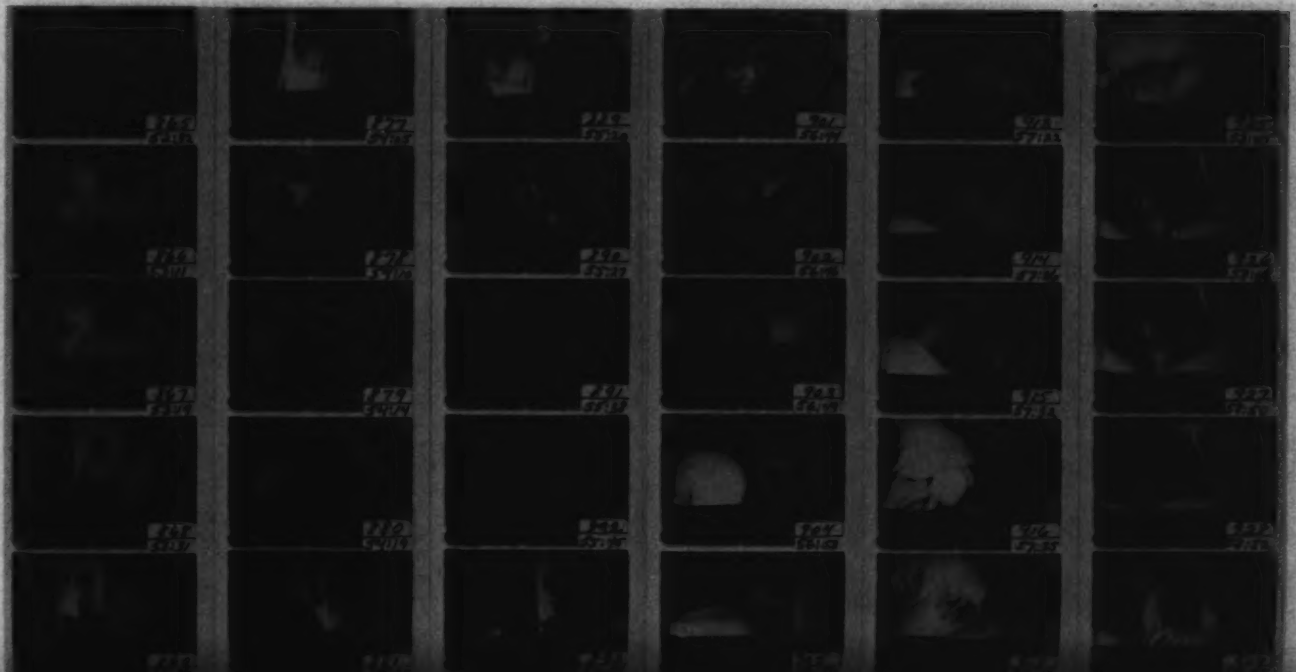
"DEEP THROAT"

(Part 12 of 14 Parts)

C-24

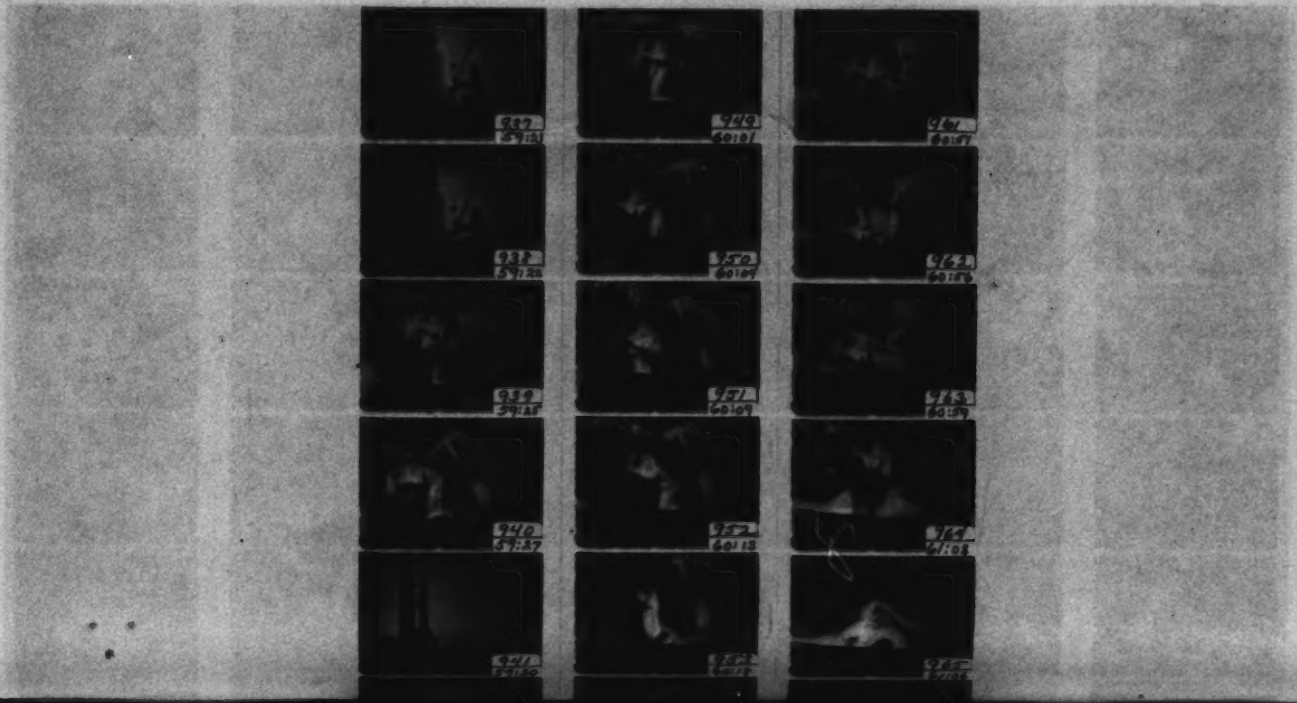
"DEEP THROAT"

(Part 13 of 14 Parts)

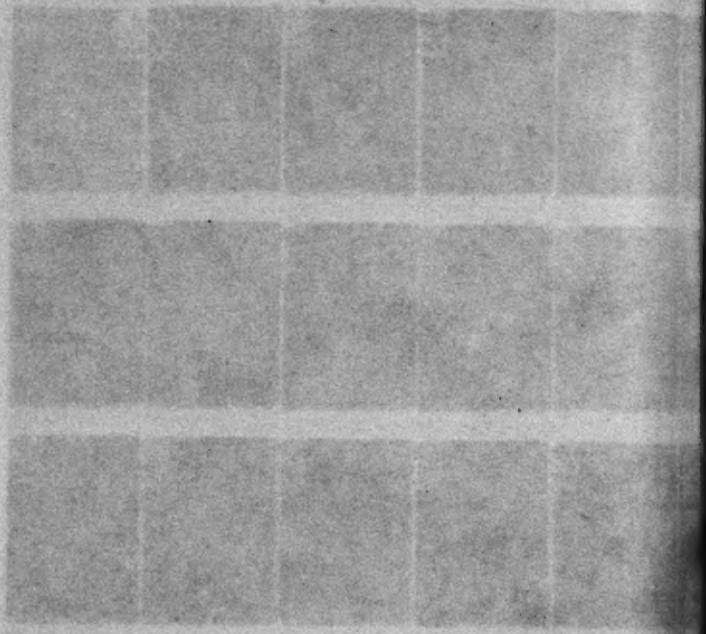


"DEEP THROAT"

(Part 14 of 14 Parts)



964
67:17
964
67:31
970
67:33
971
67:38
956
60:38
957
60:43
957
60:43
957
60:43
976
60:57
944
57:57
946
57:58
946
57:58
947
57:58
947
57:58



APPENDIX D

TIME-MOTION STUDY OF MOTION PICTURE FILM

SCHOOL GIRL pp. D-1 thru D-33

Exhibited at

Trans-Lux

14th & H St., N.W.

Washington, D.C.

Sept/Oct. 1972

School Girl

(Part 1 of 16 Parts)

D-3

"SCHOOL GIRL"

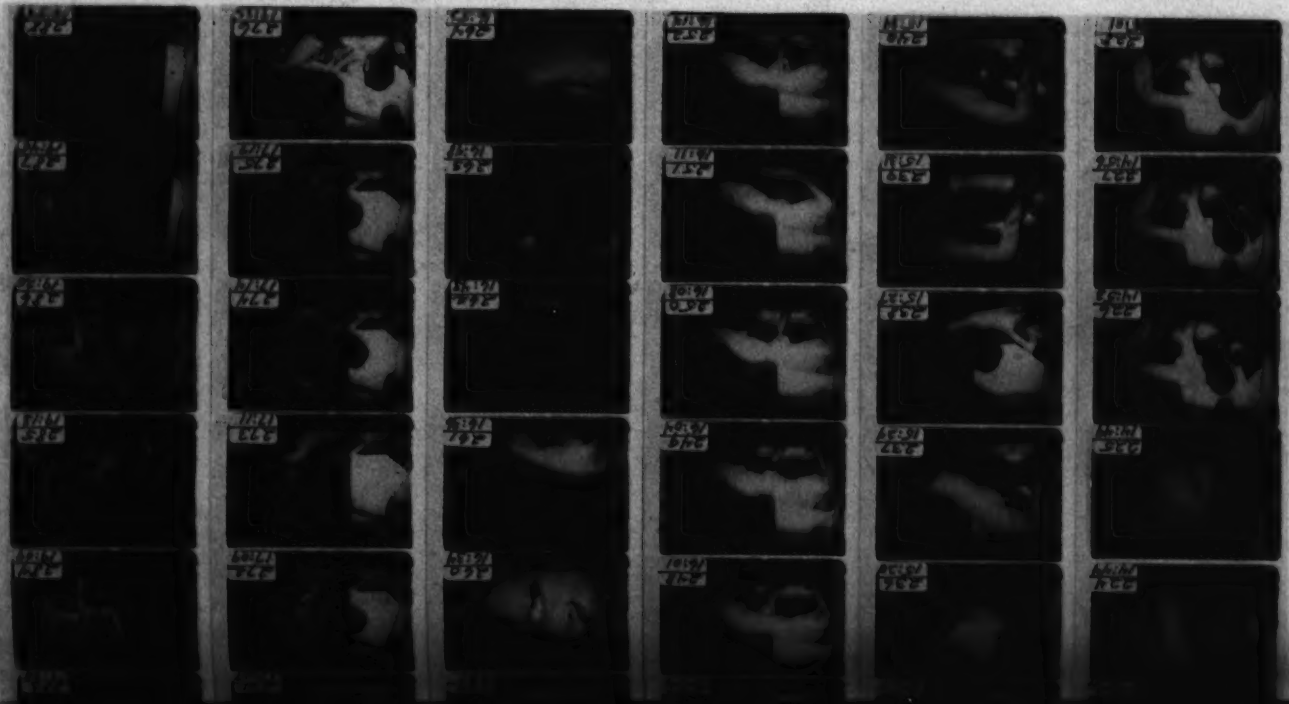
(Part 2 of 16 Parts)

"SCHOOL GIRL"

(Part 3 of 16 Parts)

"SCHOOL GIRL"

(Part 4 of 16 Parts)



D-9

"SCHOOL GIRL"

(Part 5 of 16 Parts)

"SCHOOL GIRL"

(Part 6 of 16 Parts)

"SCHOOL GIRL"

(Part 7 of 16 Parts)

"SCHOOL GIRL"

(Part 8 of 16 Parts)

"SCHOOL GIRL"

(Part 9 of 16 Parts)

"SCHOOL GIRL"

(Part 10 of 16 Parts)

"SCHOOL GIRL"

(Part 11 of 16 Parts)

(Part 12 of 16 Parts)

SCHOOL GIRL

(Part 13 of 16 Parts)

(Part 14 of 16 Parts)

D-29

(Part 15 of 16 Parts)

"SCHOOL GIRL"

(Part 16 of 16 Parts)

APPENDIX E

TIME-MOTION STUDY OF MOTION PICTURE FILM

"STICKY SITUATION E-1 thru E-33

Exhibited at

Playhouse

15th & H St., N.W.

Washington, D.C.

Sept/Oct. 1972

"STICKY SITUATION"

(Part 1 of 15 Parts)

"STICKY SITUATION"

(Part 2 of 15 Parts)

"STICKY SITUATION"

(Part 3 of 15 Parts)

"STICKY SITUATION"

(Part 4 of 15 Parts)

"STICKY SITUATION"

(Part 5 of 15 Parts)

"STICKY SITUATION"

(Part 6 of 15 Parts)

"STICKY SITUATION"

(Part 7 of 15 Parts)

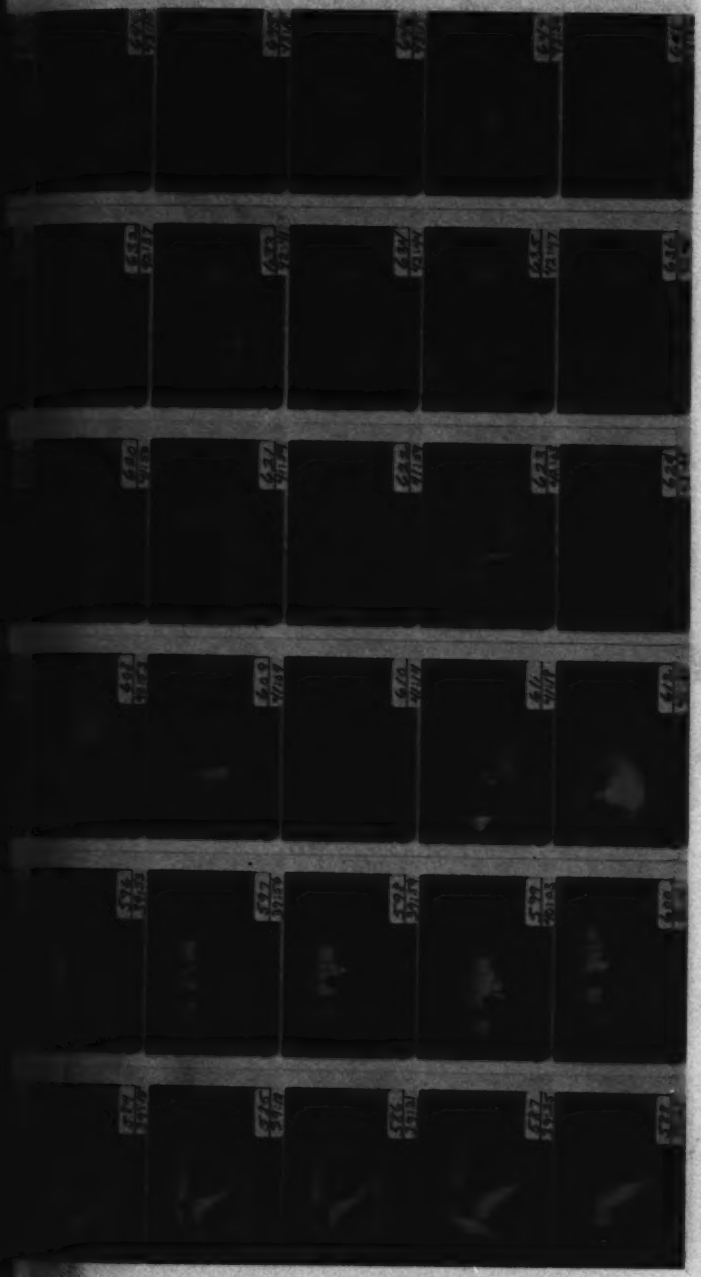
"STICKY SITUATION"

(Part 8 of 15 Parts)

E-16

"STICKY SITUATION"

(Part 9 of 15 Parts)



"STICKY SITUATION"

(Part 10 of 15 Parts)

T7-5

"STICKY SITUATION"

(Part 11 of 15 Parts)

"STICKY SITUATION"

(Part 12 of 15 Parts)

"STICKY SITUATION"

(Part 13 of 15 Parts)

"STICKY SITUATION"

(Part 14 of 15 Parts)

"STICKY SITUATION"

(Part 15 of 15 Parts)

THE END
THE END

A P P E N D I X F


LOVERS
Singles Club
A WHOLE NEW WORLD IS WAITING TO BE REVEALED
992-2811
Fiddler on the Roof
UPTOWN
Super Shag
REPUBLIC PALACE
MELINDA
H-BOAT
STICKY SITUATION
SINGLES
Starlight Roof
ROAST PRIME RIB OF BEEF DINNER
$4.95
FREE PARKING
TIM BUCKLEY
plus DAVID ELLIOT
The Other Door
ROMAN DOVE
The Stardust
FAT CITY
Dancing
EARL FATHA HINES
DINNER THEATRE
GYPSY ROSE LEE
NATIONAL
Theodore Bikel
Rotyschilds
Helen Forrest
THE BIG CAT
Hollywood Confidential
Pussycats USA
WONDERFUL WORLD of HORSES
Royal Lipizzan Stallions
THE JOHN F. KENNEDY CENTER
AN AFFECTIONATE PORTRAIT
FRED GWYNNE
EVA MARIE SAINT
THE LINCOLN MASK
8-WEEK ONLY 9-9 DAILY
WAREHOUSE
Carpet Sale
PARTIAL LISTING
REMNANTS
REMNANTS
WORLD CARPET MILL
NYLON FOAM BACKED
COMMERCIAL CARPET
3.95 SQ. YD.
MONARCH
5.95 SQ. YD.
TOWN & COUNTRY CARPETS, Inc.
16401 Oakmont Ave., Gaithersburg, Md.
948-6000

ABC, CBS Faked News, Says FCC

BY WALTER ANDREWS
Reprinted by The Times-Free Press

WASHINGTON — Two of the three major television networks have been guilty of faking news broadcasts in order to arouse viewer interest, according to testimony given to the Communications Subcommittee. ABC and CBS admitted to using a portion of the Senate Flood Disaster Committee's films to arouse viewer interest in the hearings.

The Federal Communications Commission, the government watchdog agency that licenses television stations, went to the Columbia Broadcasting System and the American Broadcasting Company to ask why they had been guilty of the deceptive practice.

The films had been made by Sen. Harley Hamilton, (D-W.Va.), chairman of a Senate Committee that investigated the disaster during the winter of 1971-72.

According to testimony given by his committee representatives, NBC would not have been guilty of the practice if it hadn't been for the fact that the network's news department refused to accept their film.

The Federal Communications Commission, the government watchdog agency that licenses television stations, went to the Columbia Broadcasting System and the American Broadcasting Company to ask why they had been guilty of the deceptive practice.

The films had been made by Sen. Harley Hamilton, (D-W.Va.), chairman of a Senate Committee that investigated the disaster during the winter of 1971-72.

According to testimony given by his committee representatives, NBC would not have been guilty of the practice if it hadn't been for the fact that the network's news department refused to accept their film.

2


XXX
Films
BOOK STALL
I-III
ADULT
THEATRES

3


PARIS I
PARIS II
PARIS I
PARIS II
XXX
I-II
ADULT
THEATRES

orno Sales Here, nut Cartel Tied

By JAMES LONG
...ournal Staff Writer

...tland's pornography in- ...y is dominated by two ...ut cartels with recent ...es ties.

...financial roots of one ...e cartels stretched, at ...oint, toward the New ...crime syndicate.

...STORY is sometimes ...to follow. It involves a ...of no fewer than two ...different corporations ...ast count) operating ...Oregon to the East

...relationship of the dif- ...corporations presents ...as confusing as the ...is an Egyptian tomb. ...ough the two cartels ...to have different lines ...nership, they have ...ed one another in the ...through financial back- ...ed, in at least one in- ..., a mutual corporate ...ter.

...chief figure behind ...land's $30-million-a- ...ost business is Atlan- ...nessman Michael ...e Thevis, 46.

...LESS than a decade, ...parlayed three small ...s news stands and ...ese parlors into a mul- ...ion dollar internation- ...pography empire in- ...several outlets in ...ed.

...source of finance for ...was a business part- ...ssmith (Jap) Hanna, a ...gambler and hoodlum ...turned out, also had ...dealings with a New ...gangster.

...is, in an interview last ...ber with reporter Lar- ...ook of the Atlanta ...al, admitted that Han- ...loaned him money on ...casions. Thevis said ...d the money back both

...FIRST I didn't think ...ch about the fact that ...as financially able to ...me a couple of loans," ...said.

...always paid him back. ...e times was there ...a need more loans. ...finally we looked into ...background and I didn't ...like what I found. So I ...him out of our part- ...and that was that."

Thevis said he kept in touch with Hanna, however, and that the gambler once referred him to a tax lawyer to handle some problems with the Internal Revenue Service.

On Nov. 17, 1970, Hanna's body, shot full of holes, was found in the trunk of his Cadillac in Miami.

THE MURDER never has been solved, but federal authorities believed it had something to do with the seizure of a shipment of pornographic books in North Florida shortly before Hanna was killed.

Thevis, who had received loans from Hanna during their adult bookstore partnership days, was sufficiently well-heeled in 1966 to provide financial backing for Portland's other big pornography dealer, James R. Haskin of Los Angeles.

Haskin, owner of the Eros hardcore theater and bookstore chain, got started with the help of a "line of credit" establishment by Thevis. This was confirmed by Thevis in a 1971 interview in Los Angeles.

BOTH Haskins and Thevis at that time denied they were in business together, but an investigation of corporation records in Oregon, California, Missouri and Georgia shows that one of Thevis' top-ranking employes helped form Haskin's Eros Theater Corp. in Kansas City in 1970.

The employe, Robert Mitchum — not the Hollywood actor — is listed in Missouri as an incorporator of the Eros firm.

Mitchum also was the original president of Thevis' Cine-Matics Corp. in Atlanta, a maker of hardcore sex films, and is now listed as president of Northwest Theatres, Inc., operator of the Pussycat theaters and bookstores in Oregon.

Haskin was listed as president of Eros Theater Corp. in Missouri corporation papers listing Mitchum and Haskin's wife among the incorporators. Haskin is still listed as president of Eros, although Mitchum's name has since been dropped.

HASKIN'S other firms include Ecktagraphics Corp., a Nevada corporation with headquarters and two offices in Los Angeles; Eros Books, Inc., an Oregon corporation operating the Eros bookstores, and Oregon Bookmark, Inc.

Thevis' interests include Peachtree National Distributors, Global Leasing Corp., Cine-Matics, Pendulum Books, Johnny Reb news stands, Dinkler Cigar Stand, Inc., Star Center, 106 Forsythe Corp., M.G.T. Corp., Metro Dance Club, Inc.; Transportation Center of Atlanta, Inc; Automatic Enterprises, Book Bin, Inc., and Mini-Movies Inc.

Thevis could not be reached by the Oregon Journal for comment. Haskin returned a telephone call but refused to discuss the details of his various enterprises. He referred The Journal to an Atlanta lawyer, Robert E. Smith.

SMITH, one of the attorneys representing Thevis interests in the recent federal seizure of 1,500 allegedly obscene Danish magazines destined for Portland's Pussycat Bookstore, hung up the phone without talking.

A Journal tour of several pornographic bookstores indicated that Haskin's wholesale outlet, Northwestern Distributors, handles a quantity of magazine titles listed in a recent issue of Thevis's Peachtree Discount Distributors catalog.

Besides supplying the Eros chain with pornography and plastic sex organ novelties, Northwest also is a source for apparently independent outlets such as the Portland-owned Ginger and Spice bookstore in Garden Home, Idaho.

Ginger Cardwell, a Ginger and Spice official, said the store has been stocked mainly through Northwest.

Portland, Oregon
Oregon Journal
(Cir. D 129,909)

AUG 8 - 1973

...s P.C.B. ...Ext. 19...

Portland Porno Indus

Earns Millio

Portland, Oreg
Oregon Journal
(Cir. D 137,301)

AUG 8 - 19

y JAMES LONG
rnal Staff Writer

-open sex laws have
pornography a big
s in Oregon.
rding to some esti-
Portland area dealers
rill rake in $20 million
ar from avid public
for "hardcore" sex
nes, movies and plas-
elties.
ite protestations of
ealers that business is
mp, there is little evi-
hat expansion is slow-
wn.
t arrival on the local
– but hardly a strang-
e smut industry — is
-old Edwin Leslie
Lorden, known to his
as "the Howard
s of pornography."
en, who began his ca-
s a Los Angeles peep
impresario, weathered
tback of an 18-month
clement sentence in
uentin prison to ex-
is present holdings to
250 "adult" theaters
rno shops from Texas
ska.
January the portly ty-
established a movie
tion company in Port-
Panascope Produc-
o help supply film for
no empire.
den could not be
d for an interview, but
ournal spoke with his
production manager,
Nolder, 29, at Pana-
headquarters in the
wn Portland Semler
g.
r, part owner of the
Theater in Portland
owns the Lombard),
nascope has complet-
e feature-length 35-
ter "adult" films
r.
goal," he added, "is
out a feature film ev-
days. We also plan to
ome 20-minute short
."
r said Panascope has
ouble finding actors
rtland-made sex epics.
men are no prob-
he smiled, pulling out
er to show 150 appli-
. "As for the chicks,
ally find one and she
e rest."
r said one applicant
ex film role was the
r of a local discount
I couldn't believe he
rious. I asked him
he'd be bashful
dressing, and his re-
was to strip right
the spot."

Technical talent is no particular problem, either, Nolder said.

Dan Hoffman, a former KOIN-TV newsman, was hired to film Panascope's "Westward Ho House," but dropped out before the picture was completed.

Hoffman told The Journal he quit "when they wanted to get down to filming the nitty-gritty." Nolder said Panascope backed out on Hoffman because filming costs were getting too high.

"An average picture costs $6,000," Nolder said. "Westward Ho House was shot on location at Burns, and it ran up to $10,000 or $12,000. I would say $8,000 would be an absolute minimum for making a film."

According to Nolder, a 35-millimeter hardcore film rents for as much as $2,000 a week in Dallas or New York. "I don't know how much a picture earns, total," he said. "That's not my end of the business."

Dave Friedman, head of Entertainment Ventures, a Los Angeles film booking company, told The Journal he knows of "five or six" hardcore film producers making movies in Oregon to avoid California's tougher sex laws.

"They were getting busted right on the set in Los Angeles," Friedman said. "California has an oral sodomy law, and that's what they were using."

He said the California exodus speeded up when hardcore film maker Tom Parker was convicted on sex charges involving children in one of his productions.

"Personally, I don't like hardcore," said Friedman, president of the Adult Film Association. "I'm a showman, and hardcore gives away the third act as soon as the curtain rises."

Despite his alleged personal dislike, Friedman says he books sex films for theater owners because they make money.

MOST OF these films, said Friedman, are low-budget affairs made on speculation or on order from big porno dealers.

"The average 16-millimeter hardcore producer spends $2,500 to make his film," said Friedman. "He sells 20 prints for $20,000. So he runs $2,500 up to $20,000 and does this four or five times a year."

Friedman added, "But if he gets busted once, he can drop half his money on legal expenses."

Tracking down hardcore movie producers proved, for Journal reporters, comparable to a cross between a swipe hunt and an effort to interview the reel Howard Hughes.

ONE PRODUCER who gave his name as "Bob Gilbert" was reached by telephone in Eugene, and offered a tryout to Journal staffer Ox Hopkins. He did not know she was a reporter. He said the part would require nudity.

Later, Gilbert said he was shooting the film on order for a distributor he refused to name. "I do all kinds of films," explained Gilbert. "I do stock footage — a lot of legit stuff for CBS. This is just one more job."

Friedman commented, "I don't know why these guys are so furtive. I can't find them half the time myself. You run into mail drops, telephone numbers of go-betweens — all that kind of stuff. I keep telling them, 'If you're not doing anything illegal, why keep sneaking around?'"

By latest count, 18 movie theaters in Portland show sex films of one kind or another on a regular basis.

The estimated "gross" is something just short of a quarter-million dollars a week.

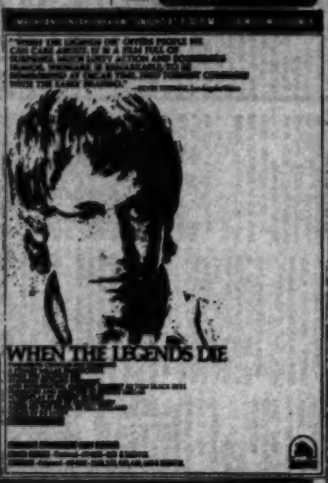
AT PANASCOPE Nolder declared that audiences are getting tired of near-plotless footage of sexual intercourse and sodomy. "We're thinking about some horror plots," he said.

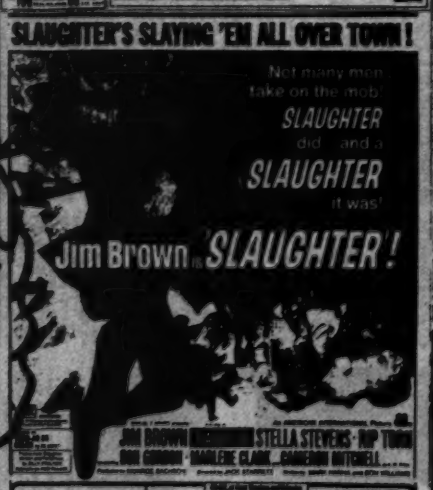
Nolder said Producer Lorden "insists on high standards" for Panascope films and "won't allow gay films, or films with animals and people, or mixed races."

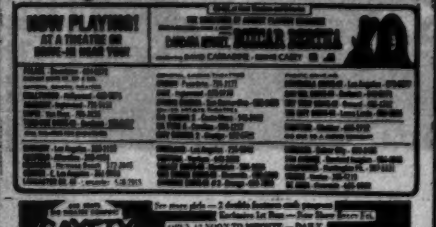
He smiled, "I guess that's ethics, of sorts, for this business."

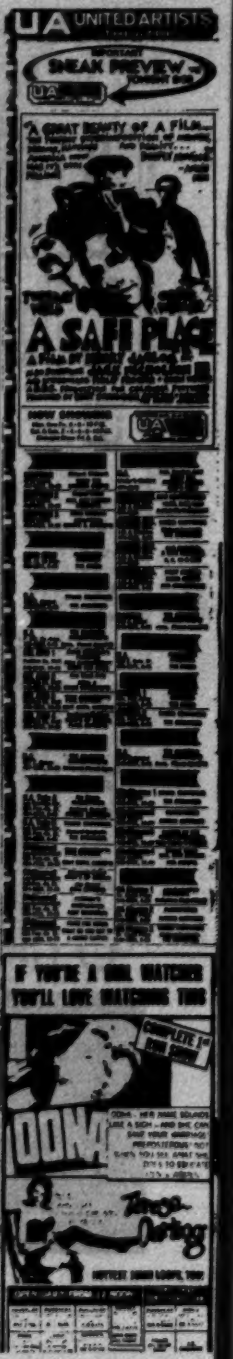
BOYD IN RIO

Raves for Israel Orchestra









Casts Of 'Hard-Core' Films Profiled

Continued From Page 3

'Simulated Sex' Model

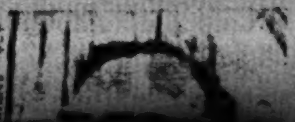
Susan, an attractive blonde, served as a topless hostess at the recent convention of the Adult Film Association of America in the Ambassador Hotel, Los Angeles. Unlike many other "actresses," Susan will perform in simulated-sex films, but stays away from hard-core.

Sex Film Cameramen Super Cautious

Continued From Page 3

A 'Rewarding' Business

Continued From Page 3



Sex Agents

Outside Of 'Reb's'

Craig E. Sevilla, 26, operates out of a small office at 1630 N. Las Palmas Ave., near the Hollywood Division of the Los Angeles Police Department. Known as "Reb," Sevilla calls his agency "Reb's Secret Intercultural Studies." People is photograph are unidentified. (Evening Outlook Photo.)

Evening Outlook Probe—5

'Hard-Core' Talent Agents Uncovered

(Editor's note: This is the fifth in an extensive series of articles examining the "hard-core" adult movie business. Today: A look at the men who provide young men and women to perform in sex films.)

By [illegible]

Leading suppliers of "natural" used in "hard-core" sex movies in the Los Angeles area

For example, Hans V. Saylor, president of Continental Theaters, Inc., of Los Angeles, one of the largest chains of "hard-core" theaters in the nation, says he is attempting to franchise a Saylor-run theater in Washington, D.C.

Saylor, a divorced Englishman from Manchester who is married and has two children, says he is attempting to franchise a Saylor-run theater in Washington, D.C.

Saylor, who has a top that the owner of the Fresno theater might be a big, sophisticated man. He is more likely, asked Fresno police for the owner's home on the business license.

Hankin's name appeared on that of an owner, along with that of his wife, but the address given was 1317 Grand Ave., Kansas City.

A telephone call to the Kansas City Star newspaper resulted in the information that 1317 Grand Ave was the address of an adult movie theater.

Movies Address

Asked about the licensee for the theater, a Star reporter turned up the information that the listed owner were Hankin and his wife. This time, the address was listed at 1230 E. Yale B Way, Marina del Rey, Calif.

It was only through this circuitous way that Hankin was linked from Fresno to Marina del Rey.

Meanwhile, the Evening Outlook ran a check on Hankin through the Kansas corporation commissioner's office in Jefferson City.

Georgia Connection

This turned up the information that the Kansas City theater was operated by a company listed as Eve Theater Corp., with Hankin and a Robert Mitchum, of 225 Sampson St., Atlanta, Ga., listed as shareholders.

Tracing out the Atlanta connection, the Evening Outlook telephoned the Atlanta Commission newspaper for more information. A reporter from the paper reportedly telephoned with the information that Robert Mitchum is a young trust man for Mike Thevis, the biggest dealer in sex materials in the South.

The 135 Simpson Street address was said to be Thevis' former business headquarters. Thevis, whose full name is Michael George Thevis, now operates his wide-ranging adult

Turn To Page 5 Column 4

Evening Outlook Probe—7

Bay Man Finds Business Rewarding

(Editor's note: This is the seventh in an extensive series of articles examining the "hard-core" adult movie business. Today's article tells the success story of a Marina del Rey resident in making, distributing and exhibiting hard-core sex films.)

By R. B. FUNK
Outlook Business Editor

As James R. Hankin gazes across the boat slips from his Marina del Rey apartment, he can reflect that his brief career in making and marketing "hard-core" sex films has been rewarding.

Two years ago, Hankin, then 41, and his first wife were divorced. Until then, his business life had included television news announcing and, prior to that, employment as a commercial pilot.

After his divorce, he said in a recent interview, "I began looking around for a new way to make money."

The infant sex film business, then in its crude early stages of production, seemed to offer an opportunity and Hankin decided to try it.

"It didn't take too much capital to give it a whirl," he said. "So I gave it a whirl."

With an initial investment of $20, he made a 16-millimeter "loop"—the name given to an 11-minute

his court battles in Orange County and in that state's anti-obscenity laws being thrown out.

A ruddy-faced six-footer who dresses conservatively, Hankin and his second wife, M. L. Hankin, live in a stylish apartment at 13200 W. Yalehi Way, Marina del Rey. He owns an 11-foot power boat and also flies his own plane, a twin-engined Cessna 310 which he hangars at Santa Monica Airport and often uses on wide-ranging business trips.

Talked Candidly

Aside from some vague answers about the dollar volume of his business and his refusal to allow himself to be photographed, Hankin seemed open and candid in talking with the Evening Outlook.

But if Fresno authorities hadn't cracked down last summer on a theater they said was showing obscene movies, the Evening Outlook might never have learned the extent of Hankin's business dealings.

Turn To Page 5 Column 5

Evening Outlook Probe—8

Sex Movie 'Empire' Bared

(Editor's note: This is the eighth in an extensive series of articles on the "hard-core" adult movie business. Today: A profile of a ghost in the sex film field.)

By ARNIE FREEDMAN
And GENE HALL
Business News Staff Writers

When Hans V. Saylor says his theater chain empire has "undergone a complete transition" during its 11-year history, he's putting it mildly.

The world of Continental Theaters, Inc., has evolved from American premieres of Russian ballet and opera films to the production of "hard-core" sex movies.

about 12 feature-length films a year—one per week—for its own theaters. This is in addition to Continental's production and distribution outlet, Signature Films, Inc., of Los Angeles.

—Where they did employ work for Continental Theaters and Signature Films, headquartered in new offices on Hollywood Boulevard near La Brea Boulevard.

—In 1970, the organization grossed "over $5 million," of which $4 million did come from ticket sales at the boxoffice. Net profits were "over $1 million."

Never Lost A Case

"Never on Sunday," which I was surprised to see on television recently."

But when it comes to describing the type and amount of the films his theaters exhibit and his production company makes, he becomes more evasive.

Continental Theaters today, he says, is engaged in the "exhibition" film business, exhibiting "adult-type" or "nudie-type" motion pictures.

"We don't recognize the term 'hard-core,'" Saylor said.

However, that wasn't the case when he employed

But there are ways to find out real names of people who try to disguise themselves, and the Evening Outlook found out that "Bob" is really Craig E. Brown.

Another Operator

John Carrol is a middle aged operator of a Hollywood agency that deals, he says, "only in magazine layouts."

He's even more reluctant than Sawitz to talk about his business.

Neither man will admit to connections with hard-core film makers.

But others in the business will tell you that Sawitz and Carrol are the two [illegible] of hard-core sex films, said that although he has never personally dealt with Sawitz, he is "sure" he provides models used in hard-core films. (Henderson knows Sawitz only by his nickname, "Bob," however.)

Tom Anton, operator of the ASA Agency, Hollywood, says Sawitz deals predominantly in performers used in hard-core films.

Another Variety

Anton's actors and actresses are used almost exclusively for sex films, but not of the hard-core variety.

"I'm the biggest casting director in exploitation films," Anton said. [illegible] Sawitz [illegible] here for four months [illegible] Anton, however, [illegible] he would like to [illegible] about that fact.

"The boys used about a [illegible]," he commented.

ANTON wouldn't [illegible] his falling out with Sawitz [illegible] apparently a [illegible] business dispute.

In addition to comments from producers, exhibitors and other sources, Sawitz and Carrol's names were mentioned frequently by "actors" and "actresses" interviewed by the Evening Outlook. They, too, said the men supply performers used in hard-core films.

Sawitz, a former motorcycle gang member who will see a steady stream of young men and women going in and out.

A few may be answering one of his ads in the Los Angeles Free Press newspaper for "models," with the promise of high pay. But it's a safe bet that most have been there before and are inquiring about further job possibilities.

Started As Actor

Asked about his background, he said he got started in the entertainment business five years ago as an actor. "I played [illegible] heavy parts," Sawitz says. "I was in several

Turn To Page 6 Column 6

[illegible] all the way.

Today he owns a multi-state business enterprise (Oregon, California, Kansas, Arizona and New Mexico) that not only includes at least a dozen adult movie theaters, but 25 adult book stores that cater to the same tastes. He also is president of what he describes as a "holding company" in Nevada for firms engaged in related activities.

And he's adopted an attitude of outright disdain for local law enforcement agencies which have tried to impede his operations.

He boasts, in fact, that [illegible] the business I'm in."

Sayles, president and chairman of the board of Continental Theatres, will, with just a little prodding, rattle off those statistics about the state of his organization today:

—The chain consists of 32 sex theaters in seven states, including seven in the Los Angeles area, plus about 10 family-type facilities showing general-release films. Besides California, Continental operates theaters in New York, Arizona, Washington, Oregon, Alaska and Hawaii.

—The firm operates its own studio and makes [illegible] "Republican party" because of showing films released in Russia, he said during last month's Los Angeles convention of the Adult Film Association of America.

Sayles, a big man physically, who is articulate and outspoken and shows a taste for expensive suits, willingly discussed the frequency with which he is "aggravated" by the law.

[illegible] Jailed

"My wife and I were both incarcerated in the Van Nuys city jail for about seven hours in 1969," he said, "for having the audacity to exhibit the film."

[illegible] graphically, clinically show sexual acts."

He refused to give his name, saying he has "a family and a reputation to protect."

Nearby in the production lab, a film editor was working on a feature which, in one scene, showed a man who plays the role of a gangster forcing a naked young woman to perform an oral sex act.

(Showing oral copulation on film is considered hard-core by legal standards.)

The film was in color with full sound and will

Turn To Page 6 Column 6

Evening Outlook Probe—6

Sex Film Cameramen Must Be Cautious

(Editor's note: This is the sixth in an extensive series of articles on the "hard-core" adult movie business. Today: The men behind the camera in sex films.)

By ARNIE FRIEDMAN
and GENE HALL
Evening Outlook Staff Writers

Mike Henderson, Jack Genero and Howard [illegible] all make their livings behind a camera, the kind used to depict hard-core sexual acts on film.

Each shoots [illegible] for adult movies in [illegible] and the sex films [illegible] of the country. [illegible]

[illegible]

Henderson, 29, produces and directs his films. [illegible]

The typical cameraman of sex films leads a [illegible] life.

[illegible]

Haven't [illegible] the Label

[illegible]

Hard-Core [illegible]

[illegible] a producer of "loops" — the featurettes which are typically [illegible] with hard-core.

Between Jan. 15 and Feb. 8, more than a dozen phone calls were made by the Evening Outlook to Henderson's office in efforts to interview him and arrange to photograph him. On three different occasions, he cautiously answered questions about himself and his business over the phone but [illegible].

Each time he was asked for an interview in person and for a few minutes of his time to photograph him [illegible] was "too busy."

[illegible]

[illegible] were considered by some in the business as doing the "hardest" of the hard-core, Henderson responded, "I wouldn't say that."

Whose are "harder"? he was asked.

"Well, everything I see is about the same," said Henderson. "If you go in one theater you see it. If you go in another theater, you see it. Everybody's doing the same thing."

During one conversation, he acknowledged that a large quantity of his film was taken in the police raid on the film processing lab Pacific Film Industries, [illegible] Santa Monica Boulevard.

All the film seized was later ordered to be returned, however, when U.S. District Court Judge Harry Pregerson granted an injunction sought by defense attorneys contending that the police failed to follow proper procedures in making the raid. [illegible] Max Willens [illegible]

[illegible] there," he said. "Everything from films on the national air races down to films of Las Vegas lights. They took everything."

Willens earlier said the raid was prompted by police discovery that "Pacific was engaged in a massive production of sexually-oriented films, many of which were considered by us as hard-core pornography."

Illicit Materials

"We further discovered that approximately 95 per cent of the business engaged in by this firm (Pacific) involved the production of illicit materials—hard-core."

When Henderson was asked by the Evening Outlook if some of his film seized was hard-core, he said, "There was some, but they've still got some of it too."

By that, Henderson said he meant some of his own hard-core film has still not been returned to him.

[illegible]

'Hard-Core' Cameraman

Howard Zehn, cameraman and co-owner of a Hollywood production company that makes "hard-core" sex films, checks over his $16,000 [illegible] motion picture camera before going to work. Zehn lives on Pacific Coast Highway in Pacific Palisades.

[illegible]

Turn To Page 6 Column 1

F-11

WEEKLY VARIETY 6-28-72

F-12

Deep Throat
(COLOR)

Hardcore hetero sex feature with humor a plus. Tops in the current market.

Aquarius release of Vanguard (Lou Perry) production. Directed, written and edited by Jerry Gerard. Camera (color), Harry Flecks; sound, Morris (Gottlieb); set decoration, Lon Camp. (No other credits). Reviewed at World Theatre, N.Y., June 12, '72 (No MPAA rating). Running Time: 73 MINS.

Pre-opening word on this latest hardcore feature was hot enough to pack the lunch-time show on opening day at N.Y.'s World Theatre. While "Deep Throat" doesn't quite live up to its advance reputation as the "Ben-Hur" of porno pix, it is a superior piece which stands a head above the current competition.

Lensed in Miami on what appears to be a higher-than-usual budget, pic takes a tongue-in-cheek approach to conventional hetero hardcore, dishing out enough laughs with the main course to prove sexpo features need as much comic relief as suspenseers.

Plot centers on a young lady disappointed because she fails to "hear bells" during her repeated sex bouts with as many as 14 men at a time. A visit to her accomodating doctor reveals that nature has played her another trick. With practice, the heroine finally experiences a moment right out of "To Catch a Thief," with fireworks, bells, etc. In the happy ending, she also finds a young man with credentials equal to her own.

Pic's technical quality is above-par, including sharp color photography and a satirical musical score which spoofs, among other things, Coca-Cola's "It's the Real Thing" television commercial.

Performances are spirited, especially that of the femme lead, and writer-director-editor Jerry Gerard has put it all together with some style. *Vare.*

WEEKLY VARIETY 9-13-72

Legal Tactics: 'Throat' Opts For Full Jury

The adversary hearing for "Deep Throat," originally scheduled for last Friday (8), did not take place as attorneys for the World Theatre, New York, decided to bypass the hearing and opt for a full jury trial.

Police had attempted to seize the "Deep Throat" print three weeks ago but were forced to return it since seizure took place same as adversary hearing. Lawyers for the World felt such a hearing could result in a judge finding "probable cause" for an obscenity trial and thus open the World to continuing print seizures until trial date is set. Hope is for a better chance with a full jury than with a single judge.

BOXOFFICE 9-11-72

'Deep Throat' Voluntarily Off Screen Until Hearing

BINGHAMTON, N.Y.—Attorney Seymour Detsky, representing Cinecom Theatres in Binghamton City Court, has agreed that the circuit will not show the allegedly "obscene" movie, "Deep Throat," again in Broome County until after a hearing Thursday (14). The accord was in consonance with conditions laid down August 25 by Judge Walter T. Gorman.

The X-rated film, "Deep Throat," was seized Monday night, August 21, by Binghamton city police who entered the Strand Theatre on Chenango Street where the movie had been playing three weeks. Strand manager Michael Sabal and operator Binghamton Theatres Co. were charged with second-degree obscenity, a misdemeanor.

The Strand obtained a second print of "Deep Throat" and showed it again Wednesday night, August 23. Police seized the second film before it had completed its 53-minute run.

BOXOFFICE MAY 15, 1972

EXPLOITATION FEATURE REVIEW

chool Girl — Sex Drama

herpix, Inc. — 87 Minutes — Rel. Nov. 71

San Francisco-based. this porno feature has ound, color photography and musical scoring as xpert as any major feature. What makes it the best any of this type yet seen is a maximum amount plot, about 30 minutes' worth. In most of these ilms, the non-erotic footage runs about 5 or 10 inutes. The heroine, a college student, must pre- are a paper of an unusual experience for her psy- hology class. After a sex session with her boy riend, she buys a sex newspaper and answers sever- l ads. She has relations with an older bachelor, nswers obscene phone calls and makes it with a ther-son duo. The girl's roommate finds her sexy ooks and has intercourse with the instructor of he psychology class. When the heroine brings in her ssignment, she says she enjoyed it all. For once, sex film without guilt. David Reberg directed. rand prize winner, Amsterdam Adult Film Festival ward 1971-72.

Debra Allen, Susan George.

BOXOFFICE SEPT. 25, 1972

dict Two Memphis Firms hipping Obscene Films

MEMPHIS—Criminal prosecution in the deral court is the next step in the fight ainst what the government charges is the owing of obscene movies in Memphis. The ederal Grand Jury returned indictments in emphis against two corporations and an fficer of one on charges of interstate ship- ent of obscene movies.

The indictments followed recent federal urt hearings, in which Judge Robert Mc- e viewed the movies in question in open urt and found them obscene.

Charged in the indictments are Art Thea- e Guild, Inc., and Arnold Jordan, vice- esident, for the shipment from New Jersey Memphis of "an obscene, lewd, lascivious d filthy motion picture, 'School Girl.' "

The grand jury returned a two-count in- tment against Academy Films, Inc., for nsporting from Iowa to Memphis the films eep Freak," and "The Spy" and from inois to Memphis of the films "Lust ycles" and "City Women."

The films, impounded by U.S. marshals ce raids in May, are still in federal cus- dy. All defendants, on arraignment, plead- l not guilty.

Each count of the indictments provides aximum penalty of five years in jail and- $5,000 fine, Larry Parrish, assistant

WEEKLY VARIETY Aug. 30, 19

REFUSES TO CURB COPS, D.A. RE 'DEEP THROAT'

New Orleans, Aug. 29.

U.S. District Judge Lansing L. Mitchell has refused to enjoin the New Orleans Police Dept. from seizing "obscene" films from the Plaza Theatre or the Orleans Parish District Attorney's office from prosecuting the defendants arrested by police.

The attorney for the Art Theatre Guild Inc., an Ohio corporation which operates the theatre sought a permanent injunction against the city and the DA's office resulting from the seizure of a film, "Deep Throat," at the film house July 24.

The ruling permits prosecution to proceed against Kenneth Eastin, manager of the theatre, and John Brazier, the cashier, who were arrested and charged with contributing to the delinquency of a juvenile and exhibiting obscenity to a minor.

Police also seized business records of the house and a cashbox containing about $1,000.

BOXOFFICE SEPT. 25, 1972

2 Prints of 'Deep Throat' Are Returned to Cinecom

BINGHAMTON, N.Y. — Two prints of "Deep Throat," seized by law enforcement officers as "obscene" in August at the Cinecom circuit's Strand Theatre on Chenango Street, have been returned to the corporation. However, according to James M. Barber, Cinecom attorney, there are no plans to exhibit "Deep Throat" in this city until a trial, as-yet unscheduled, has been held to determine the legal status of the film.

Cinecom lawyers Monday (11) waived an adversary hearing that had been slated for Thursday (14) in city court.

Obscenity Issue

Pending Before the U.S. Supreme Court Slows Drive on Smut in Times Square

Mayor Lindsay's campaign ainst pornography in the mes Square area has been wed for the time being by obscenity case pending be- re the United States Supreme urt.

In two cases last week, films at the police had seized in ds on Times Square theaters d to be returned to the the- r operators after their law- rs convinced a Criminal Court dge that his authorization of eir seizure was illegal. The se dealt with sodomy.

A score of raids against peep ows in the Times Square area ed the shows down for two ys, but legal proceedings ainst the operators were de- ed after the operators ob- ned injunctions barring the lice from interfering with the terprises.

Seymour S. Detsky, counsel 10 of the operators, sought injunction, charging that the lice entered the peep-show emises without warrants, ized films before examining m and without warrants and thout having an adversary ceeding on their alleged ob- nity, and used pickaxes ille- ly to put the peep-show ma- nes out of business.

By agreement with the city's rporation Counsel, the police re directed not to interfere h the enterprises, pending a l of the charges of obscen- and the countercharges in minal Court next Tuesday.

The deterioration of the area been widely attributed to proliferation of movie ses showing films on sex version, peep shows offer- film strips involving what the owners call "soft-core" pornography, unlicensed "mas- sage parlors" and bookshops peddling books, pamphlets, photographs and devices on sexual themes.

Because of the protests of midtown businessmen, includ- ing many from the theater district who believe that the spread of pornography shops has hurt their industry, the Mayor ordered members of his administration to meet with representatives of the District Attorney's office last July 12 to plan a long-range campaign against pornography.

But the campaign met with increasing ineffectuality and, last Thursday, the police found themselves powerless to halt the showing of a film adver- tised as a portrayal of sodomy.

The film was "Deep Throat," presented at the World Theater, 153 West 49th Street, two doors east of a church, the Times Square chapel of the Salvation Army. At the request of the police public morals division, Criminal Court Judge Ernst Rosenberger viewed the film with Patrolman Michael Sulli- van on Thursday night, then signed an order authorizing the police to seize the film when the theatre closed at 1 A.M. Friday.

A summons was served on the owner of the theater, Rob- ert Sumner, and he was ordered to appear in court later in the day. Mr. Sumner's lawyers argued that Judge Rosenberger acted contrary to law in sign- ing the authorization because he had failed to give the owner an adversary hearing first on whether the film was obscene.

Judge Rosenberger orde recess while he researche law. Returning to the ben 4 P.M., he said he had to with the defense attorney, Detsky, and ordered the p to return the film. Howeve also directed that a subp be served upon the lawye produce the film in court further hearing on Sept. 8.

The issue is one that is before the Supreme Court rehearing. The court has a to decide whether a judge has seen an allegedly ob movie may issue a search rant to seize it from a t without first giving the t owner a hearing on w the film is obscene.

At present, a film case go through laborious s to the High Court, which take years, before the can act to halt its presen enabling, in a case when crime is proved, the ope to profit from their c before the law may inter

In the "Deep Throat" the theater owner, Mr. Su substituted a second pri the film and the house on schedule at 10 A.M. F with no halt in its acti The film was still being yesterday afternoon.

In a second case, hea involving a film titled Sticky Situation, seize Thursday at the Holly Twin I Theater, Eighth A and 47th Street, the film not shown again after i turn on Friday. That cas also heard by Judge Rose er.

Deputy Inspector Jose Lynch of the public morals vision said his men would tinue to hand out summ when they found theaters peep shows presenting rials held to be obscene.

The injunctions and senberger ruling

Obscenity Issue Pending Before the U.S. Supreme Court Slows Drive on Smut in Times Square

SUBJECT INDEX

TABLE OF AUTHORITIES CITED

CASES

CODES & STATUTES

MISCELLANEOUS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

NO. 71-1051

PARIS ADULT THEATRE I, ET AL,
Petitioners,

v.

LEWIS R. SLATON, DISTRICT ATTORNEY, ATLANTA JUDICIAL CIRCUIT, ET AL,
Respondents.

On Writ Of Certiorari From The Supreme Court of Georgia

MOTION OF CHARLES H. KEATING, JR., FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE IN SUPPORT OF RESPONDENT WITH BRIEF ANNEXED

Charles H. Keating, Jr., (hereinafter referred to as Moving Party) respectfully moves, pursuant to Rule 42(3) of the Rules of the U. S. Supreme Court, for leave to file a brief as Amicus Curiae in support of the Respondents, Hinson McAuliffe, as Solicitor General of the Criminal Court of Fulton County, Georgia, and Lewis R. Slaton, as District Attorney, Atlanta Judicial Circuit.

Moving Party has a special interest in the subject matter of this appeal, having devoted considerable time, study and effort to assisting law enforcement in combating the spread of obscenity in the Nation: first, as the founder and co-counsel for Citizens for Decent Literature, Inc., and more recently as a member of the Presidential Commission on on Obscenity and Pornography. Moving Party is also the appellee in an obscenity case pending before this Court, entitled, *"A Motion Picture Film Entitled 'Vixen', Russ Meyer, Eve Productions, Inc., Malibu, Inc., and Clarence P. Gall v. State of Ohio ex rel Charles H. Keating, Jr.*, October Term 1971, No. 71-599, as to which this Court on January 12, 1972, requested a response.[1] The latter appeal was carried over to the 1972 October Term without this Court having taken action thereon.

---

[1] In Moving Party's response thereto, see Motion to Affirm at pages 13-18, this Court was urged to grant plenary review in the "Vixen" appeal for several reasons: 1. The appeal involved a civil matter and was limited to the obscenity vel non issue; and 2. the record presented ideal "facts" for review, which included (a) one of the defendants was Producer Russ Meyer, the "King" (and very first) of the pandering motion picture producers; (b) the testimony of defense witness, film historian Arthur Knight, who candidly traced the erosion which has taken place since Russ Meyer started it all, and Russ Meyer's participation therein: (See also Arthur Knight's "tout" of "School Girls" in the Los Angeles Times "Cinema Theatre" ad of Oct. 7, 1972, at Appendix F , page 3) and (c) the testimony of plaintiff's witness, Mr. Melvin Anchell, a practicing psychiatrist and author of "Sex and Sanity," who very logically explained the psychiatric basis for the proscription of obscenity (and this Court's holding in Roth-Alberts, 354 U.S. 476, 485, that it was the universal judgment of civilized nations that obscenity should be restrained). The members of this Court, having viewed "Magic Mirror," produced several years after "Vixen" should make a comparison of the same with "Vixen" (photography, content, musical sound track, etc.) and ask themselves if justice does not require that a case, dealing directly with the producer, be handed down for the enlightenment of and as a warning for those in the trade. See Appendix F, pp 8-11 for Santa Monica article on James R. Haskin, Executive Producer of "Magic Mirror".

The grant of a writ of certiorari herein brings before this Court for oral argument, the first obscenity case dealing with a motion picture film since the grant of a writ of certiorari ten years ago in *Ohio v. Jacobellis*.[2] In Jacobellis, this Court reviewed the felony conviction of Nico Jacobellis, manager of the Heights Art Theater in Cleveland Heights, Ohio, for exhibiting the French imported film "Les Amants" (The Lovers) and examined the interdependent "obscenity" and "scienter" issues, which in the following years have continued to plague this Court.[3] Here in the *Paris Adult*

---

[2]Jurisdiction was first noted at the commencement of the 1962 October Term. *Jacobellis v. Ohio*, 371 U.S. 808, 9 L.Ed.2d 52, 83 S. Ct. 28 (Oct. 8, 1962). After argument without decision during that term, the case was restored to the docket. *Jacobellis v. Ohio*, 373 U.S. 901, 10 L.Ed.2d 197, 83 S. Ct. 1288 (Apr. 29, 1963). Reargument did not occur until late in the 1963 October Term (Apr. 1, 1964) with this Court's no-clear majority decision being handed down on the last day of that term. *Jacobellis v. Ohio*, 378 U.S. 184, 12 L.Ed.2d 793, 84 S. Ct. 1672 (June 22, 1964).

The *Jacobellis* decision presents only the law of the case and is not a constitutional precedent which binds this Court. In that decision, Justices Warren, Clark and Harlan dissented and Justices Black and Douglas refused to sit in judgment on the merits and apply the law of the land in *Roth v. U.S.*, 354 U.S. 476, 77 S. Ct. 1314, 1 L.Ed.2d 1498 (June 24, 1957), which holds obscenity legislation constitutional. Of the four remaining Justices, Justice White's vote without opinion can, with reason, be attributed to the criminal aspects of the case and the unfortunate fact that Jacobellis, as an alien and convicted felon, would be subject to a denial of citizenship. Compare Justice White's dissenting vote on the same day in the *civil case, Grove Press, Inc. v. Gerstein* (Tropic of Cancer), 378 U.S. 577, 12 L.Ed.2d 1035, 84 S. Ct. 1909 (June 23, 1964). Justice Stewart erroneously applied a "hard-core pornography" reasoning which this Court, in reviewing a state obscenity conviction in *Misbkin v. New York*, 383, U.S. 502, 508, 16 L.Ed.2d 56, 61, 86 S. Ct. 958 (Mar. 21, 1966), held *not* to be the law.

[3]See, for example, the compromising result reached in the *Redrup* and *Austin* cases, cert. granted, limited to the "scienter" issue in *Redrup v. New York*, 384 U.S. 916, 16 L.Ed.2d 438, 86 S. Ct. 1362 (Apr. 25, 1968), and *Austin v. Kentucky*, 384 U.S. 916, 16 L.Ed.2d 438, 86 S. Ct. 1362 (Apr. 25, 1966), but decided on

Theater case the issues are not so complex – only "obscenity vel non" is being litigated, and that in relation to the fundamental power of a sovereign state, functioning in a civilized society, to proscribe the same as a matter of law, so as to preserve good public morality.

Moving Party submits that the real import of the appeal herein will be apparent only to those members of this Court who are willing to recall to mind from memory the vastly superior state of public morality (sexual) which existed when *Jacobellis* was decided just one short decade ago. Succinctly put, when one dwells for too long a period in a dung heap, the reminiscent smell of fresh air has an elusive manner of escaping the memory.[4] Without invoking that

---

other grounds in a no-clear majority decision in *Redrup v. New York*, 386 U.S. 767, 18 L.Ed.2d 515, 87 S. Ct. 1414 (May 8, 1967).

The *Redrup* decision presents only the law of the case, and is not a constitutional precedent which binds this Court. In that decision, Justices Harlan and Clark dissented. Of the seven remaining Justices, Justices Black and Douglas refused to sit in judgment on the merits and apply the law of the land in *Roth*, 354 U.S. 476, 1 L.Ed.2d 1949, 77 S. Ct. 1314 (June 24, 1957), which holds obscenity legislation constitutional. Of the five remaining Justices, Justice Stewart erroneously applied a "hard-core" pornography" reasoning which this Court, in reviewing a state obscenity conviction in *Misbkin v. New York*, 383 U.S. 502, 508, 16 L.Ed.2d 56, 61, 86 S. Ct. 958 (Mar. 21, 1966), held not to be the law in state cases.

[4]See the observations of Federal District Judge Peirson Hall, speaking on "The Monster Vice" in *U. S. v. Four (4) Books*, 289 F.Supp. 972 at 973 (Sept. 10, 1968):

"'Vice is a monster of so vile a mien,
As, to be hated, needs but to be seen;
Yet seen too oft, familiar with her face,
We first endure, then pity, then embrace.'[1]"

"The verity of the above quotation is brought home not only by the continually increasing number of periodicals, paperbacks and other printed material glorifying things which most people regard as indecent or obscene, which flood news stands and bookracks, but also, to anyone who has read them, by the recent journeys of the Supreme Court of the United States on the question of 'obscenity', ..."

[1]From Alexander Pope's "Essay on Man."